

# **APPENDIX G**

1                   RPTS JOHNSON

2                   DCMN HERZFELD

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5                   IN THE MATTER OF REPRESENTATIVE

6                   CHARLES B. RANGEL

7                   Monday, November 15, 2010

8                   House of Representatives,

9                   Adjudicatory Subcommittee,

10                  Committee on Standards

11                  of Official Conduct,

12                  Washington, D.C.

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16                  The adjudicatory subcommittee met, pursuant to call, at  
17                  9:05 a.m., in Room 1310, Longworth House Office Building,  
18                  Hon. Zoe Lofgren [chairwoman of the adjudicatory  
19                  subcommittee] presiding.

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

22                  Staff present: Blake Chisam, Chief Counsel/Staff  
23                  Director; Deborah Morris, Counsel; Donald Sherman, Counsel.

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1           Chairwoman Lofgren. If everyone would please be seated.  
2           The committee will come to order. I would like the record to  
3           reflect that all eight members of the subcommittee are  
4           present.

5           This hearing of the adjudicatory subcommittee of the  
6           Committee on Standards of Official Conduct in the matter of  
7           Representative Charles B. Rangel will come to order.

8           The Constitution authorizes the House of Representatives  
9           to discipline its Members. In the House, the Committee on  
10          Standards of Official Conduct is charged with recommending  
11          and enforcing ethical standards that ensure that Members and  
12          staff act in a manner befitting that public trust. It is  
13          under that authority that we are meeting here today. This  
14          hearing is authorized by House rule 11, clause 3, and  
15          committee rule 23.

16          The purpose of this hearing is to determine whether any  
17          of the 13 counts included in the Statement of Alleged  
18          Violation in the matter of Representative Charles B. Rangel  
19          have been proved by clear and convincing evidence. On  
20          June 17, 2010, a bipartisan investigative subcommittee of the  
21          Committee on Standards of Official Conduct adopted a  
22          Statement of Alleged Violation in the matter of  
23          Representative Charles B. Rangel. Representative Gene Green  
24          chaired the investigative subcommittee. The ranking member  
25          of the full committee, Representative Jo Bonner, served as

1 the subcommittee's ranking member. Representative Bobby  
2 Scott and Doc Hastings also served on the subcommittee. The  
3 investigative subcommittee adopted a Statement of Alleged  
4 Violations which includes 13 counts. For each count, the  
5 investigative subcommittee concluded that there was  
6 substantial reason to believe that Representative Rangel  
7 violated the code of conduct or a law, rule, regulation, or  
8 other standard of conduct applicable to Representative  
9 Rangel's performance of his official duties or the discharge  
10 of his official responsibilities as a Member of the House of  
11 Representatives.

12 The role of an adjudicatory subcommittee is to determine  
13 at a hearing whether any count of the Statement of Alleged  
14 Violation has been proved by clear and convincing evidence.  
15 The purpose of this adjudicatory hearing is to do that.  
16 However, it is important to bear in mind that the proceeding  
17 is a hearing, not a trial. Attorneys from the committee's  
18 nonpartisan professional staff are the moving party in these  
19 proceedings. Their role is to make a case for the Statement  
20 of Alleged Violation adopted by the investigative  
21 subcommittee. At the adjudicatory hearing, the burden of  
22 proof rests with committee counsel to establish the facts  
23 alleged in each count of the Statement of Alleged Violation  
24 by clear and convincing evidence.

25 Representative Rangel will have an opportunity to

1 present his side of the story should he wish to do so. A  
2 respondent is not required to present a case in his defense.  
3 And should Representative Rangel choose not to present a  
4 case, the subcommittee will not and may not draw a negative  
5 inference from that fact.

6 As members of the adjudicatory subcommittee, we are  
7 neither accusers, nor are we defenders of our colleague  
8 Mr. Rangel. It is our job and our duty to act impartially as  
9 finders of fact and law. We are honor-bound to do so without  
10 regard to bipartisanship or bias of any sort. We are  
11 required to act honestly and fairly, based upon the evidence  
12 presented to us during the adjudicatory hearing. In light of  
13 that role, I remind my colleagues that while this hearing is  
14 in progress, and while the ethics process continues for this  
15 matter, we should continue to refrain from commenting on the  
16 facts, the law, or any other aspect of this matter.

17 In conducting this hearing, the adjudicatory  
18 subcommittee will follow the procedures established by the  
19 rules of the committee. The quorum required for the  
20 adjudicatory subcommittee to conduct any business is a  
21 majority plus one, or six Members. If at any time the  
22 subcommittee does not have a quorum, the Chair may recess the  
23 hearing and may direct the clerk to contact the Members who  
24 are not present. In addition, the Chair can recess the  
25 hearing at any time as needed.

1           The order of the adjudicatory hearing will be as  
2 follows: First, the subcommittee will hear argument on a  
3 motion noticed by committee counsel. Each party will have  
4 20 minutes for argument. I would note that unless he is  
5 under oath, any statements, questions, and arguments that  
6 Representative Rangel makes will not be considered evidence  
7 in this matter. Members of the subcommittee will then have  
8 an opportunity to ask questions of the parties, should they  
9 choose, under the 5-minute rule. Following a ruling on the  
10 motion, committee counsel and Representative Rangel will each  
11 be allowed 10 hours to present their case, including the time  
12 allotted for opening statements and closing arguments. The  
13 order is established by committee rules.

14           First, I would recognize committee counsel and then  
15 Representative Rangel, who, I gather, since he is sitting by  
16 himself at the table, may be representing himself, for any  
17 opening statements they wish to make. Each party will be  
18 limited to 1 hour for their opening statements. Each party  
19 would then present their case.

20           The order for receiving testimony from witnesses and  
21 other pertinent evidence is also established by rule.  
22 Committee counsel will present their evidence and call  
23 witnesses first. Representative Rangel will have the  
24 opportunity to cross-examine witnesses called by committee  
25 counsel should he wish do so. Next, Representative Rangel

1 will have the opportunity to present evidence and call  
2 witnesses should he choose to do so. Committee counsel will  
3 have the opportunity to cross-examine any witnesses  
4 Mr. Rangel calls in his defense. After Representative Rangel  
5 finishes his case, committee counsel may ask to present  
6 rebuttal witnesses, as permitted by the Chair. Members of  
7 the subcommittee will also have the opportunity to ask  
8 questions of each party's witnesses under the 5-minute rule,  
9 unless otherwise directed by the Chair.

10 After all testimony and evidence has been presented,  
11 committee counsel and Representative Rangel will each be  
12 permitted to make a closing argument. Each party will be  
13 limited to 1 hour for their closing argument. Members of the  
14 subcommittee will then have the opportunity to ask questions  
15 of the parties under the 5-minute rule unless otherwise  
16 directed by the Chair.

17 At that time, members of the adjudicatory subcommittee  
18 will then meet in Executive Session to consider each count  
19 included in the Statement of Alleged Violation. The  
20 subcommittee will determine by a majority vote of its members  
21 whether each count has been proved.

22 The adjudicatory subcommittee would then report its  
23 findings to the full committee. If no count is proved, the  
24 full committee will prepare a report to the House based upon  
25 the report of this subcommittee. On the other hand, if any 1

1 or more of the 13 counts in the Statement of Alleged  
2 Violations are proved, the full committee will conduct a  
3 sanctions hearing to determine what sanction, if any, the  
4 committee should recommend to the House.

5 The allegations included of the Statement of Alleged  
6 Violations are significant, and we take seriously our  
7 obligation to conduct these proceedings fairly, impartially,  
8 and with the dignity and decorum befitting any proceeding  
9 before the House of Representatives. This is a forum to  
10 discharge our responsibilities and our duties as set forth in  
11 the rules of the House and the rules of the committee. The  
12 adjudicatory hearing will be conducted subject to the rules  
13 of decorum of the House of Representatives, and all  
14 participants will be required to observe strictly and  
15 promptly all evidentiary, procedural, and other rules of the  
16 committee and rulings issued in this hearing.

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

20 At this time, I recognize Representative Mike McCaul,  
21 the ranking member of the subcommittee, for his brief opening  
22 remarks.

23 Mr. McCaul. Thank you, Madam Chair.

24 As I stated at the opening hearing last July, this is an  
25 important day both for Mr. Rangel, for this committee, for



1 the Congress, but, most importantly, for the American people.  
2 And let me be clear, no member of this committee asked for  
3 this assignment. Sitting in judgment of a fellow Member and  
4 colleague is a very difficult thing for all of us to do. But  
5 we accept our responsibility here today. We serve for no  
6 other reason than to protect the honor, integrity, and  
7 credibility of this institution, often referred to as the  
8 People's House.

9 The American people's confidence in us is at an historic  
10 low. They want their elected Representatives held  
11 accountable for their actions, just as they are held  
12 accountable as private citizens. It is my sincere hope that  
13 these public, televised hearings will help increase  
14 transparency and accountability and restore much-needed trust  
15 to the House as an institution.

16 Our responsibility as judges in this matter is to be  
17 fair and impartial. There is no place for presumed guilt  
18 before innocence in this process, and there will not be in  
19 this case. Hearings of this kind are rare and historic.  
20 These hearings follow a 21-month long bipartisan  
21 investigation, an investigation that received sworn testimony  
22 from nearly 50 witnesses and over 28,000 pages of documents,  
23 an investigation that produced a 13-count Statement of  
24 Alleged Violations, and over 500 exhibits that have been  
25 placed on the committee's Web site. These allegations, if

1 proven, would demonstrate that Mr. Rangel violated multiple  
2 provisions of the House rules and Federal statutes. As  
3 judges we must determine whether these allegations are proven  
4 by clear and convincing evidence.

5 On numerous occasions the respondent, Mr. Rangel, has  
6 requested public hearings, a right that he is afforded under  
7 the committee rules. Today this hearing affords him the  
8 opportunity to be heard. And as judges in this matter, it is  
9 our responsibility to make sure the process is both fair and  
10 dignified. And as a former Federal prosecutor in the Public  
11 Integrity Section at the Department of Justice, due process  
12 is nothing new to me. It is guaranteed by our Constitution,  
13 and it is a responsibility I take very seriously. So as we  
14 prepare to hear the evidence against one of our most tenured  
15 colleagues in the House, we need to ensure we have done  
16 everything we can to assure the American public that we will  
17 handle this matter with the utmost professionalism and  
18 nonpartisanship that it deserves. We cannot forget that  
19 public office is a public trust.

20 With that, I yield back.

21 Chairwoman Lofgren. The gentleman yields back.

22 Before proceeding, we see that committee counsel is  
23 present.

24 Mr. Rangel, are you represented by counsel here today,  
25 or are you representing yourself?

1           Mr. Rangel. Madam Chair, I would like the opportunity  
2 to make a brief statement as to why I am here without  
3 counsel. And I recognize that -- I appreciate that none of  
4 you Members have asked for this very awkward and sometimes  
5 embarrassing responsibility. And I truly believe that the  
6 Constitution requires that we have a standard of conduct that  
7 is expected of Members of Congress no matter how long they  
8 have served.

9           The reason I asked for this proceeding to be delayed or  
10 postponed is because I am without counsel. This committee  
11 has suggested to me by letter that it would be possible for  
12 me to set up a legal defense fund, but this was 2 weeks ago,  
13 and now the procedure is moving forward before we have had an  
14 opportunity to set up that fund. But more important than  
15 that to me is the question of due process not just for me,  
16 but for any Member of Congress who has been accused of  
17 anything. They should have a lawyer.

18           On several occasions I have spoken with chief counsel, I  
19 have spoken to the Chair, and I have inquired. On  
20 October 22nd, the chairlady sent me a letter and basically  
21 denied me an opportunity to get a lawyer for three reasons:  
22 One, because this matter has been going on for over 2 years,  
23 and because during this period of time I had counsel. Well,  
24 that is true, but it is not my fault that it took 2 years  
25 before this Statement of Alleged Violation was reported. And

1 I would like to add that during this period of time, my  
2 lawyers were trying to meet while you were investigating.  
3 When the charges of counsel became over \$2 million and I  
4 could not convince them that I will be able to pay for what  
5 one of the lawyers said could be a million dollars for the  
6 hearing, they withdrew. The committee knew that they  
7 withdrew. So the argument that this has been going for  
8 2 years is accurate, but I don't see how it relates to me not  
9 being able to have counsel before you today.

10 The second issue that has been raised, and I think  
11 Mr. McCaul, who has had criminal experience, knows, I have  
12 been asked asking for this matter to be here. I have been  
13 begging that my colleagues in the Congress, that my  
14 constituents, that my family have the opportunity to hear  
15 this. My family has caught hell as a result of what has been  
16 out there. All I asked was when can we develop these  
17 charges? When can people be exposed to what it is? And this  
18 really meant with counsel.

19 You have said, Mr. McCaul, that there has been 40  
20 witnesses that you have called. You have indicated that  
21 there are 30,000 pages of testimony. I have not been able to  
22 explain my position ever because of rules of confidentiality,  
23 because I have been restricted. But each time that I have  
24 asked for a hearing, do any of you believe that I was asking  
25 for a hearing without counsel? And all I am doing is asking

1 for the opportunity to have counsel. I still feel strongly  
2 that the Congress and the community should know what I have  
3 been charged with and what the testimony is. But by the same  
4 token, I had hoped that you would do it before the Democratic  
5 primary. It would have been helpful if you had done it  
6 before the general election. But for whatever reason, when I  
7 made my plea on the floor when I had counsel, that was not  
8 done.

9 I might even add that when my opponent and critics were  
10 charging me with corruption and allegations of crime, I  
11 really had hoped and thought that this committee was not just  
12 there to find wrongdoing, but would say that one of your  
13 colleagues, there was no evidence of criminal activity, there  
14 was no self-dealing, there was no bribery. I just thought  
15 fairness would dictate that this would be said. Maybe I am  
16 not entitled to it, but I certainly didn't get it.

17 And so the whole idea that I am denied counsel because I  
18 have been screaming for a hearing, that really doesn't take  
19 away from the argument that I am being denied the right to  
20 have a lawyer right now because I don't have the opportunity  
21 to have a legal defense fund set up, and because I can't  
22 afford another million dollars and can't even promise that to  
23 counsel.

24 But quite frankly, committee members, it is the third  
25 reason that the Chair has given to me that pains me the most

1 as to why I am not entitled to a delay, I am not entitled to  
2 a postponement: Because this matter perhaps could not be  
3 resolved before the end of this session of Congress. Can you  
4 tell me under what theory of fairness would dictate that I be  
5 denied due process, that I be denied an attorney because  
6 there is going to be the end of this session, when we know  
7 that I would be entitled if we had more time? That is what  
8 you are saying. What does it mean that we have a  
9 Thanksgiving and Christmas and perhaps congressional trips  
10 preparing for the next Congress? How far does this go to a  
11 person not having counsel, not having due process because we  
12 don't have time?

13 Well, I think we ought to find the time. I am prepared  
14 to stay here, to get counsel, and to have a hearing on this.  
15 What prevents us from doing it?

16 And then to add to that, as I stand before you, I have  
17 no idea as to how counsel intends to proceed. A week ago 80  
18 pages of what could be considered summary judgment, I think,  
19 would indicate that this committee may not be prepared to  
20 call witnesses, that this committee would ask that a judgment  
21 be made based on admissions and exhibits. I have had no  
22 lawyer to look at this. But to me, it just sounds unfair to  
23 say that because of limitations of time, we won't even go  
24 through the process of calling witnesses.

25 I hope that you interrupt me and tell me, counsel, that

1 this is not so. But on the other hand, if it didn't want to  
2 have the appearance of fairness, Mr. McCaul said that you  
3 have spoken with 40 witnesses or more, that there is 30,000  
4 pages of testimony. Am I entitled to know what they  
5 testified to? I have been given deadlines in terms of how to  
6 respond, what witnesses I would want to subpoena. But I have  
7 been denied that opportunity.

8 Chairwoman Lofgren. Mr. Rangel.

9 Mr. Rangel. If the Chair is suggesting that I conclude  
10 my remarks, then I would do that. But I would want you to  
11 know that I don't think it is fair that I participate in any  
12 type of proceeding if, in fact, what you are basically  
13 telling me is that the political calendar will not allow you  
14 enough time to allow me to get a lawyer at this crucial point  
15 in my life. Fifty years of public service is on the line. I  
16 truly believe that I am not being treated fairly, and that  
17 history will dictate that, notwithstanding the political  
18 calendar, I am entitled to a lawyer during this proceeding.

19 I want to thank you for your courtesy. There is a lot  
20 of pain that I feel because I fought in the wars. I have  
21 prosecuted in the U.S. Attorney's Office. I have served as a  
22 legislator in the State. I am so proud of my record in the  
23 Congress. I love this Congress. I love this country. I  
24 think I am entitled to more than what is being suggested  
25 today.

1 Thank you so much for this courtesy.

2 Chairwoman Lofgren. Thank you, Mr. Rangel.

3 Before turning to committee counsel, I would just note  
4 for the record, and I will put into the record the exchange  
5 referred to by Mr. Rangel so this will not be a mystery to  
6 the public, but I would note that we were advised that  
7 Mr. Rangel's counsel withdrew a little over a month ago, and,  
8 further, counsel has not been retained, and that the  
9 committee has indicated an intent to proceed today.

10 [The information follows:]

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12 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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1           Mr. Butterfield. Madam Chair, would it be appropriate  
2 to ask you a question?

3           Chairwoman Lofgren. Certainly.

4           Mr. Butterfield. Are you going to construe Mr. Rangel's  
5 statements over the last 10 minutes -- and I listened to what  
6 he had to say very carefully, and let me say that it also  
7 troubles me that he is before the committee today without  
8 counsel. Are we going to consider his statement as a motion  
9 to continue this hearing?

10          Chairwoman Lofgren. Is that a motion to continue,  
11 Mr. Rangel?

12          Mr. Rangel. I don't know whether -- first of all, my  
13 role here is as a respondent, and I am not here representing  
14 myself. I have been a lawyer long enough to know that it is  
15 very, very unwise for any person, a lawyer or a judge, to be  
16 his own lawyer at a proceeding like this. So I am not in a  
17 position to make a motion unless we are talking about  
18 fairness, unless we are talking about someone contradicting  
19 everything I said, unless any Member has any question to ask  
20 of me.

21          Chairwoman Lofgren. Thank you.

22          Mr. Rangel. And notwithstanding the fact that you are  
23 submitting your letter for the record, if there is anything I  
24 have said about that letter and all of the conversations we  
25 have had, I would think that notwithstanding procedure, Judge

1 Butterfield, that fairness would allow you to say that this  
2 is a statement of how I feel as a person, as a Member of  
3 Congress, and as a citizen that is begging for due process.  
4 You can call it a motion, and I can't quite frankly answer  
5 that question.

6 Chairwoman Lofgren. We appreciate that, Mr. Rangel.

7 We will turn now to committee counsel Mr. Chisam to  
8 introduce your team and to make your motion for the admission  
9 of evidence.

10 Mr. Chisam. Madam Chair, Ranking Member McCaul, members  
11 of the subcommittee, Representative Rangel, my name is Blake  
12 Chisam. I am the chief counsel for the committee. To my  
13 right is Deborah Morris, counsel to the committee. And to my  
14 left is Donald Sherman, also counsel to the committee.

15 At this time, Madam Chair, I would move to introduce  
16 Exhibits 1 through 549 into the record.

17 Chairwoman Lofgren. Is there objection?

18 Mr. Rangel. Well, Madam Chair, if it pleases, with all  
19 due respect, I am not in a position to pass judgment on what  
20 counsel is about to do. I have never known that this  
21 proceeding even existed as summary judgment, if that is what  
22 he is about to do. Any lawyers that I have talked with have  
23 said that this committee has no history at all --

24 Chairwoman Lofgren. If I may interrupt, Mr. Rangel.

25 Mr. Rangel. Yes.

1           Chairwoman Lofgren. Just to clarify this, we were  
2 noticed, as were you, of this motion. I would like to make  
3 clear, however, that we will hear the motion, the argument  
4 from the committee counsel and whatever argument you may  
5 choose to make, but that if you wish to be heard in an  
6 opening statement, if you wish to proceed with witnesses, we  
7 will hold any ruling on that motion in abeyance so that if  
8 you wish to be heard, we will hear you.

9           Mr. Rangel. I appreciate the Chair saying that. Would  
10 that include the right for me to have a lawyer?

11           Chairwoman Lofgren. You may hire whoever you wish as a  
12 lawyer. That is up to you.

13           Mr. Rangel. Well, all I am -- you have seen the record.  
14 Two million already. And I have been advised that this  
15 hearing could cost me another million. You have offered me  
16 the opportunity to have a legal defense fund, which would  
17 allow perhaps a lawyer to come into the case. If that is  
18 what you are saying, there is nothing I would not yield to  
19 for that purpose. But you know that if you are saying that  
20 we can't move forward, then that restricts me from getting a  
21 lawyer not only financially, but the legal defense fund that  
22 you suggest that I would have would have no meaning at all.

23           If what you are saying -- if there is anything I can do  
24 within the rules of the committee that would allow me to move  
25 forward with this, not to object to just the procedure, but I

1 did not know until a week ago that this 80-page would be the  
2 way you intended to judge my conduct. A week ago. So I can  
3 listen to what he is saying, but does this mean that he is  
4 going into this procedure that I don't have counsel to guide  
5 me?

6 Chairwoman Lofgren. If I may, Mr. Rangel, if you could  
7 be seated. For clarification, the respondent has inquired of  
8 the committee whether a fund could be created where  
9 contributions could be made for legal representation and has  
10 been advised by the committee that that is permissible;  
11 however, the retention of counsel is up to the respondent.  
12 Whether you are to hire it at your own expense, through your  
13 campaign committee, or through a fund is your decision, not  
14 the committee's decision.

15 Mr. Rangel. All I am asking -- and I agree with you  
16 100 percent, Madam Chair -- all I am asking is the time to  
17 get counsel. I have lawyers from Washington, D.C., and  
18 New York who are willing to give me free counsel, to be able  
19 to come here because they don't think I have been treated  
20 fairly, and yet they say that if they do, that is a gift and  
21 violates all of the laws. I heard that perhaps they can do  
22 it at reduced fees or fair fees if only we had time to  
23 develop the committee. You tell me that I don't have time to  
24 do that. And so while you tell me that, yes, I can hire  
25 anybody, get anybody, not have a lawyer, you also are saying,

1 and that is the very part of your letter, that time does not  
2 permit this matter to be concluded before the end of this  
3 session. And that is the nuts and bolts of what we are  
4 talking about. You tell me all of the things I could do, but  
5 you are not going to give me time do it. I think no one can  
6 say that that is not the way this ends up. Yes, I can do  
7 these things, but you have to conclude this now and the next  
8 day. And my reputation, 50 years of public service, has to  
9 suffer because this committee has concluded that you must  
10 conclude this matter before this Congress ends. And all I am  
11 asking for is time to get counsel, time to get counsel. And  
12 you are saying now, I think, that you denied it before, and  
13 you are denying it now.

14 Chairwoman Lofgren. I gather that you do not object to  
15 the admission of the evidence that has been proffered by  
16 committee counsel. And therefore the --

17 Mr. Rangel. I object to the proceeding. And I, with  
18 all due respect, since I don't have counsel to advise me, I  
19 am going to have to excuse myself from these proceedings,  
20 because I have no idea what this man has put together over  
21 2 years that was given to me last week. And I just hope that  
22 the history of this committee, in terms of fairness, would be  
23 judged for what it is.

24 So with all due respect, and recognizing how awkward it  
25 is for the members of this committee, as colleagues, and

1 someone that would like to preserve the right of Members to  
2 be judged by their peers with counsel, I respectfully remove  
3 myself from these hearings.

4 Mr. Butterfield. Madam Chair, before the respondent  
5 leaves, may I ask the Chair an additional question?

6 Chairwoman Lofgren. Certainly.

7 Mr. Butterfield. Even though the respondent did not  
8 specifically make a motion to continue this hearing, I deem  
9 his comments to be a motion to continue. And I would like  
10 this committee to seriously consider a motion to continue. I  
11 would like for us to do it in Executive Session and discuss  
12 among ourselves what the respondent has said, because I take  
13 his contentions very seriously. I served as a judge in my  
14 State for 15 years, and I know the importance of counsel,  
15 especially in this environment. So I am going to ask that we  
16 deem his statements to be a motion to continue, and that we  
17 discuss it in Executive Session.

18 Chairwoman Lofgren. All right. That is a request from  
19 one member to have a discussion on the -- well, it would be  
20 your motion --

21 Mr. Butterfield. I will make a motion to continue the  
22 matter, and ask that we take it up in Executive Session.

23 Mr. Conaway. Second.

24 Chairwoman Lofgren. We will go into our closed session  
25 and have a brief discussion, and then we will return.

1           Mr. Butterfield. Was there a second to the motion?

2           Chairwoman Lofgren. Yes, there was.

3           Mr. Butterfield. There was a second to the motion. All  
4 right.

5           [Whereupon, at 9:35 a.m., the subcommittee proceeded in  
6 Executive Session.]

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1       RPTS\_MERCHANT

2       DCMN\_NORMAN

3       [10:22 a.m.]

4               [Resuming Open Session.]

5               Chairwoman Lofgren. The subcommittee has been meeting  
6 on the motion made by Mr. Butterfield and seconded by Mr.  
7 Conaway to consider a continuance of this matter. And the  
8 committee has decided not to continue this matter.

9               I would like to make just a couple of comments regarding  
10 that decision. Mr. Rangel has repeatedly sought and received  
11 committee guidance on how he may pay his legal fees in this  
12 matter. Mr. Rangel asked for formal advice from the  
13 committee in September of 2008, in March of 2009, again in  
14 October of 2010, and again in November of 2010, and received  
15 informal advice on that in August. Each time the committee  
16 responded and provided Mr. Rangel with formal guidance about  
17 how he could pay for legal fees in this matter relative to  
18 contributions. And of course there is no prohibition on an  
19 individual using their own fees to retain counsel. It is not  
20 required that those fees be paid for by others.

21               Under current House rules it is not possible for Mr.  
22 Rangel to accept pro bono representation, nor is it possible  
23 for the committee to compel Mr. Rangel's former counsel to  
24 represent him here today. We are extremely troubled that  
25 they -- that his former counsel withdrew shortly after this



1 hearing was noticed.

2 I would note that these matters have been underway for  
3 quite some time. The investigative subcommittee completed  
4 its work, and Mr. Rangel, the respondent, was provided with  
5 all of the evidence and material on June 17th of this year  
6 and again with the Notice of Alleged Violations formally on  
7 July 22nd of this year.

8 We are prepared to proceed today. We recognize that Mr.  
9 Rangel has indicated that he does not intend to participate,  
10 and it is his right not to participate in this matter. As  
11 mentioned earlier, no conclusions as to the facts of this  
12 matter can be drawn by the fact that Mr. Rangel has decided  
13 not to participate in this hearing. Unless there are further  
14 matters at this point I would like to turn --

15 Mr. McCaul. Madam Chair, may I make a comment?

16 Chairwoman Lofgren. Certainly.

17 Mr. McCaul. First of all, since the first hearing  
18 opened in July, the ranking member of the full committee, Jo  
19 Bonner, myself, and Minority, have repeatedly asked that this  
20 committee proceed with this hearing as expeditiously as  
21 possible, as requested by the respondent. It is unfortunate  
22 in my view that that did not occur, and we are where we are  
23 here today.

24 And I would also agree with Madam Chair that it is also  
25 unfortunate that the law firm of Zuckerman, for whatever

1 reason, is not here today to represent Mr. Rangel and somehow  
2 got off the case after the notice of hearing was scheduled.  
3 And with that, I will yield back.

4 Chairwoman Lofgren. Thank you for those comments. At  
5 this point I would ask our counsel, Mr. Chisam, if he has  
6 some --

7 Mr. Welch. Madam Chair.

8 Chairwoman Lofgren. Yes, sir.

9 Mr. Welch. I just would like, if I may.

10 Chairwoman Lofgren. You certainly would be heard.

11 Mr. Welch. Well, I would like to agree with Mr. McCaul.

12 It is an astonishing display of professional  
13 irresponsibility, in my view, for a law firm to be  
14 representing an individual, whether it is before this  
15 tribunal or another tribunal, to essentially drain the  
16 resources available to pay the firm, to do this for 2 years.  
17 We are told that it is in the range of \$2 million that Mr.  
18 Rangel has paid for services. And then literally on the eve  
19 of the hearing, where his fate is in peril, they withdraw.

20 And it reminds me of Bleak House where the Dickens  
21 character at the very beginning of this epic novel is an  
22 estate lawyer. And at the beginning there is a very large  
23 estate. And the book ends when all the resources of the  
24 estate have been drained by the estate lawyer. None of the  
25 problems of the estate have been resolved. This is an

1       astonishing thing.

2               Now, I understand that our rules prohibit us from taking  
3       action on that. But if this were a court of law, and a month  
4       before the capital case came to trial, after 2 years of  
5       preparation, the lawyer withdrew, a judge would not permit  
6       that to happen.

7               So I want to agree with Mr. McCaul in expressing my  
8       astonishment at Zuckerman Spaeder for taking the money,  
9       draining the money, and then kicking their client to the side  
10      of the road when it came time for the actual hearing. Thank  
11      you.

12              Mr. Butterfield. Madam Chair, I would like to be  
13      recognized.

14              Chairwoman Lofgren. Certainly, Mr. Butterfield.

15              Mr. Butterfield. I too, Madam Chair, would like to  
16      associate my comments with Mr. Welch and Mr. McCaul. I agree  
17      that it is fundamentally unfair to the respondent for counsel  
18      to, after learning of the date of this hearing, I believe the  
19      date of the hearing was announced by the chair --

20              Chairwoman Lofgren. On October 7th.

21              Mr. Butterfield. And on October 14th we didn't get a  
22      communication from the lawyer asking permission to withdraw,  
23      they simply gave notice that they were off the case. That is  
24      fundamentally unfair. It would not have happened in my  
25      courtroom when I was a trial judge, and it should not have

1       happened here.

2               I think we need to at the very least look at  
3       promulgating a rule that will prohibit this from happening in  
4       the future. And also we might want to look at where we can  
5       make sure that this firm explains their conduct to the  
6       committee. I yield back.

7               Chairwoman Lofgren. The gentleman yields back. Unless  
8       there are further members wishing to be heard, we will turn  
9       now to Mr. Chisam who has a motion regarding the introduction  
10      of evidence into the record.

11              Mr. Chisam. Thank you, Madam Chair. I would renew my  
12      motion to introduce exhibits 1 through 549 at this time.

13              Chairwoman Lofgren. There is a motion. And unless  
14      there is objection from any party or member of the committee,  
15      those items will be entered into the record.

16              [The information follows:]

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18              \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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1           Chairwoman Lofgren. Do you have additional motions?

2           Mr. Chisam. I do, Madam Chair. At this time I would  
3 like to introduce what have been marked as Exhibits 550, 551,  
4 552 and 553. These are four affidavits. Exhibit 550 is the  
5 affidavit of Maurice Greenberg; 551 is the exhibit of Neil  
6 Rubler; 552, the exhibit -- Exhibit 552, the affidavit of  
7 Lorie Slutsky; Exhibit 553, an affidavit from Ivan  
8 Seidenberg.

9           Madam Chair, we are prepared to call witnesses in this  
10 matter, and we would be able to call or would call 12  
11 additional witnesses. Throughout the course of preparation  
12 and in recent days we have entered into -- well, witnesses  
13 have offered affidavits. The respondent was given notice of  
14 those, he was provided copies and in fact, in at least one of  
15 these instances, suggested changes to the language which we  
16 negotiated and which we agreed to.

17           At this time I would move the admission of those  
18 affidavits in lieu of the live testimony of those witnesses.

19           Chairwoman Lofgren. There is a motion to put those  
20 affidavits into the record. Is there an objection? If not,  
21 then the items, by unanimous consent, will be put into the  
22 record.

23           [The information follows:]

24

25           \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

1           Chairwoman Lofgren. I would note also for the record  
2           that we have received this morning a letter from Congressman  
3           Bobby Scott, along with a document entitled "Minority  
4           Viewpoint." And without objection, those items will also be  
5           placed into the record.

6           [The information follows:]

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8           \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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1           Chairwoman Lofgren. Mr. Chisam.

2           Mr. Chisam. Madam Chair, at this time I would like to  
3 call up and proceed with the motion that we noticed on  
4 November 8, 2010.

5           Chairwoman Lofgren. The motion is a motion for summary  
6 judgment. As indicated earlier, each side has 20 minutes to  
7 argue this motion with the opportunity, if necessary, for  
8 extension of time on either side. At this point we will ask,  
9 Mr. Chisam, if you would like to begin your argument on this  
10 motion.

11          Mr. Chisam. I would. Thank you.

12          Madam Chair, Ranking Member McCaul, and members of the  
13 subcommittee, the motion before you is in fact 13 separate  
14 but nearly identical motions. Those motions say quite simply  
15 that it is time for you to vote. The affirmation supporting  
16 our motion states our case at length, and it argues that,  
17 based on the uncontested facts in this record, each of the 13  
18 counts in the Statement of Alleged Violation is ripe for a  
19 vote.

20          More than 6 months ago the respondent was provided  
21 notice of the intended charges against him. More than 5  
22 months ago he was given the investigative subcommittee's  
23 documentary record as well as transcripts of testimony. On  
24 October 22, 2010, by direction of the chair, committee  
25 counsel provided its exhibits to respondent. He was afforded

1 an opportunity to object to those exhibits and he did not.

2 Also on October 22, 2010, respondent was notified of the  
3 names of witnesses we intended to call. He was given  
4 summaries of their expected testimony. He was provided an  
5 opportunity to object and he did not.

6 Respondent was given the opportunity to provide notice  
7 of any evidence that he intends to offer and any witnesses,  
8 including himself, that he intends to call. He gave no such  
9 notice. Though provided the opportunity, respondent has not  
10 contested the evidence, nor has he indicated that he intends  
11 to put on a case.

12 Put simply, the record before you is the record, the  
13 facts are the facts, and the counts are ripe for a vote.  
14 There are 13 counts charged in the Statement of Alleged  
15 Violation:

16 In short they are, Count 1, improper solicitation.

17 Count 2, violation of clause 5 of the Code of Ethics for  
18 Government Service relating to the respondent's receipt of  
19 favors or benefits from private donors under circumstances  
20 that reasonable persons might construe as influencing the  
21 respondent's duties.

22 Count 3, a violation of the gift rule for respondent's  
23 receipt of indirect gifts from private donors who gave to the  
24 Rangel Center at the behest of the respondent.

25 Count 4, violation of Postal Service laws and Franking



1 Commission regulation for using his frank to solicit private  
2 donations.

3 Count 5, a violation of the Federal franking statute.

4 Count 6, a violation of House Office Building Commission  
5 regulations for soliciting private donations on House  
6 property.

7 Count 7, violation of the purpose law and House  
8 Administration Committee regulations for misusing official  
9 resources to solicit private donations.

10 Count 8, violation of the letterhead rule.

11 Count 9, violation of the Ethics in Government Act and  
12 House rule 26 for failing to file full and complete financial  
13 disclosure statements.

14 Count 10, violation of clause 5 of the Code of Ethics  
15 for Government Service for accepting a favor or benefit from  
16 his landlord in the form of his landlord's tolerance of  
17 respondent's nonconforming use of a residential  
18 rent-stabilized apartment for campaign purposes.

19 Count 11, a violation of clause 2 of the Code of Ethics  
20 for Government Service for failing to uphold Federal tax laws  
21 and other laws and legal regulations.

22 Count 12, a failure to adhere to both the letter and to  
23 the spirit of the House's rules.

24 And Count 13, conduct not reflecting creditably on the  
25 House. The solicitations for the Rangel Center at the City

1 College of New York.

2 Counts 1 through 8 all relate to respondent's  
3 solicitations for the Rangel Center at the City College of  
4 New York. The law here is really quite simple. Members of  
5 Congress may not solicit unless they follow rules established  
6 by the House Ethics Committee. The respondent could have  
7 lawfully solicited donations for the Rangel Center by doing  
8 so only in his personal capacity, but he did not. Indeed,  
9 the respondent has admitted that he used official letterhead  
10 to solicit.

11 [Video clip shown.]

12 Mr. Chisam. In addition to misusing his official  
13 congressional letterhead, the uncontested evidence in this  
14 case shows clearly that respondent sent over 100 letters on  
15 official letterhead that included a brochure requesting  
16 \$30 million for the Rangel Center. He sent letters on  
17 official letterhead that were by themselves taken as  
18 solicitations by donors and potential donors. At least one  
19 donor to the Rangel Center, the Rhodebeck Charitable Trust,  
20 gave \$25,000 based solely on respondent's letter. He used  
21 staff time and other official resources to create a list of  
22 potential donors from which he sent letters. He used staff  
23 time and official resources to draft those letters and to  
24 schedule appointments with potential donors to discuss  
25 funding for the Rangel Center. He used his congressional

1 frank to send solicitation letters. He created and mailed  
2 solicitation letters from his D.C. congressional office. He  
3 solicited donations to the Rangel Center from individuals,  
4 from businesses, and from foundations with business and  
5 interest before the House, as well as the Ways and Means  
6 Committee. Many of those entities contacted him and his  
7 staff about legislative and other official matters during the  
8 period in which he solicited.

9 In one case with respect to AIG, respondent said that it  
10 would not be appropriate for him to meet with AIG  
11 representatives to discuss Rangel Center funding. He later  
12 met with AIG officials to close that deal. AIG did not  
13 donate because of the perceived headline risk.

14 The respondent solicited a gift to the Rangel Center  
15 from David Rockefeller who donated \$100,000 from his personal  
16 funds in tribute to the respondent. The respondent  
17 indirectly received gifts from private entities and  
18 individuals when they donated money to the Rangel Center, at  
19 his request and in his honor.

20 The respondent received updates from both the City  
21 College and his staff on the status of funding for the Rangel  
22 Center. He kept track of what was going on. He focused his  
23 energies and his time on private sector fundraising for the  
24 Rangel Center, particularly after a \$3 million earmark that  
25 he requested fell through, along with other earmarks, in

1 2006.

2 These facts are uncontested and they are in the record  
3 before you. They clearly and convincingly establish that the  
4 respondent violated counts 1 through 8 in the Statement of  
5 Alleged Violation. His financial disclosure and tax issues.

6 The uncontested evidence in this record establishes that  
7 the respondent repeatedly did not get his financial  
8 disclosure statements and tax filings correct. He has  
9 admitted as much.

10 [Video clip shown.]

11 Mr. Chisam. The papers before you show his errors and  
12 omissions. The facts here are the facts. The omissions are  
13 the omissions. The inaccuracies are the inaccuracies. These  
14 facts are uncontested and they are in the record. They  
15 clearly and convincingly establish that respondent violated  
16 counts 9 and 11 in the Statement of Alleged Violation as  
17 nonconforming use of an apartment as a campaign office.

18 The uncontested facts show that the respondent leased an  
19 apartment in the Lenox Terrace complex in Harlem in his  
20 district in 1996. The lease for that apartment stated that  
21 he was to use it for living purposes only. He did not.  
22 Instead, he used it solely and exclusively as a fundraising  
23 office for his campaign committees. The commercial use of  
24 that property violated the terms of his lease. More  
25 significantly, the commercial use of that property violated

1 building code regulations and zoning laws.

2 The respondent made no secret about his use of the  
3 apartment as a campaign office. He paid the rent with  
4 campaign checks, his staff sent e-mails to the landlord's  
5 in-house counsel who oversaw evictions, with his apartment  
6 address for the campaign office clearly noted. At the same  
7 time the landlord was evicting other tenants at an increased  
8 rate on the grounds of nonprimary residence. Some of the  
9 tenants complained to respondent's congressional office.  
10 That office contacted the tenants and the landlord. The  
11 landlord had representatives who also met with the respondent  
12 about a new development project.

13 The landlord's tolerance of respondent's nonconforming  
14 use of his rent-stabilized apartment was a favor or a benefit  
15 to the respondent, particularly during the time the landlord  
16 was evicting other tenants for not using their apartments as  
17 primary residences. The respondent's interactions with his  
18 landlord as part of his official duties may have created an  
19 appearance of impropriety. The respondent has said as much  
20 himself.

21 [Video clip shown.]

22 Mr. Chisam. Again, these facts are uncontested and they  
23 are in the record before you. They clearly and convincingly  
24 establish that the respondent violated count 10 of the  
25 Statement of Alleged Violation.

1           Counts 12 and 13 allege that respondent's acts and his  
2 accumulations of acts violated both the letter and the spirit  
3 of House rules and other laws and that his conduct did not  
4 reflect creditably on this House. The uncontested records --  
5 the uncontested facts in the record before you clearly and  
6 convincingly establish that the respondent violated both  
7 counts 12 and 13 of the Statement of Alleged Violation.

8           Finally, the respondent himself has noted that the  
9 allegations are serious, indeed very serious matters, and  
10 that his conduct violated the rules.

11           [Video clip shown.]

12           Mr. Chisam. For these reasons and for those stated more  
13 fully in our written motion, we submit to you that there are  
14 no genuine issues as to any material facts in this case. As  
15 a result, the case is ripe for decision. We simply request  
16 that you grant each of the 13 motions listed in our notice of  
17 motion and that you commit the matter forthwith to the  
18 subcommittee for its deliberation and for a vote on each  
19 count as alleged. Thank you.

20           Congresswoman Lofgren. Thank you, Mr. Chisam.

21           I would note that this motion and all of the documents  
22 entered into evidence are posted on the committee's Web site  
23 in the effort to be fully transparent. At this time, Mr.  
24 Rangel would have been recognized to argue against the  
25 motion, but he is not present and had indicated earlier his

1 intention not to further participate. So at this time,  
2 members of the committee who have questions will be  
3 recognized under the 5 minute rule. Do any members of the  
4 committee have questions at this time? Mr. McCaul.

5 Mr. McCaul. Thank you, Madam Chair. It is our role as  
6 judges to determine as a matter of law in this motion we need  
7 to look as to whether there is a material issue of fact in  
8 dispute.

9 Perhaps the most serious allegations put forth in the  
10 SAV have to do with the respondent's alleged violations of  
11 the Tax Code, particularly given the respondent's position as  
12 chairman of the Ways and Means Committee, the committee  
13 charged with writing the tax laws for the Nation.

14 In your motion for summary judgment on page 77, Mr.  
15 Chisam, you say, Respondent also violated the tax laws by  
16 failing for 17 years to report and pay on rental income on a  
17 beach villa in Punta Cana, Dominican Republic. Respondent  
18 has admitted that he should have reported the rental income.  
19 And from there on you say that it is undisputed and that he  
20 violated the Internal Revenue Code.

21 I went to look at some exhibits that you attached to see  
22 whether there is any material issue of fact in dispute. On  
23 pages 38 and 39 you provide a chart.

24 Chairwoman Lofgren. Could you suspend for a minute? We  
25 have the opportunity to put exhibits on display if members

1 have questions about them. So perhaps we can let that  
2 happen. Do you need time to do that? Give the exhibit  
3 number and they can go with that. I'm sorry for  
4 interrupting.

5 Mr. McCaul. You did provide a chart, Mr. Chisam, on the  
6 income on the Punta Cana. And it essentially indicated that  
7 he failed to report on original tax returns between the years  
8 of 1998 to 2006. Interestingly, he sent a letter in 1993 to  
9 the Dominican Republic requesting a contract on this villa  
10 where he says, "As I mentioned to you, the House Ethics  
11 Committee requires disclosures by Members of Congress of any  
12 assets and unearned income. And while I enjoy a good  
13 relationship with the committee's chairman, it certainly  
14 would be politically embarrassing if I were unable to provide  
15 an accurate accounting of my holdings."

16 And yet when he testified before the investigative  
17 subcommittee on the issue of his tax returns, he stated that  
18 he had a misguided, inappropriate view -- quote, unquote --  
19 regarding the income because he had not received a check or  
20 direct income.

21 However, when the president of Punta Cana testified, he  
22 stated that the resort sent statements every 6 months showing  
23 this income. And if we could put up Exhibit Number 82 on the  
24 screen, this is a letter to Mr. Rangel from the resort. And  
25 in the first paragraph it says, This statement shows a total



1 net income of \$2,604.

2 Next I would like to put up Exhibit Number 540. Now,  
3 this appears to be a letter written from Mr. Rangel to the  
4 Speaker, Nancy Pelosi. And in this letter he states, Until  
5 this year I have not received any personal cash proceeds from  
6 the rentals of the unit. That is of September 2008. I have  
7 not personally received proceeds in cash.

8 And then he goes on to say that as chairman of the Ways  
9 and Means Committee, I am held to a higher standard of  
10 propriety.

11 If the committee would turn to Exhibit Number 87. While  
12 he states that he did not receive this income, I found, as  
13 the judge, interesting Exhibit Number 87 that he sent a  
14 letter under his signature to the Punta Cana Yacht Club  
15 asking them, Please send the income check for beach villa 412  
16 Punta Cana to the account of Charles and Alma Rangel.

17 There seems to be in my view some discrepancy in the  
18 record as to whether -- when we talked about earned income  
19 and whether this should be reported, the document seemed in  
20 my view to indicate another matter.

21 And lastly, Exhibit Number 89, if that could be put up  
22 on the screen. He said he never received cash; yet when I  
23 was reviewing the exhibits, I found this wire transfer  
24 directly from the Punta Cana Yacht Club to Mr. Rangel as far  
25 back as 2002.

1           The statements from there in terms of the earned income,  
2 as to my understanding, were sent every 6 months. And so I  
3 guess my question is -- and these letters were written on  
4 official stationery -- for Mr. Chisam, on the one hand I  
5 think the documents seem to be uncontroverted, and yet Mr.  
6 Rangel seems to have some explanation as to why this was not  
7 earned income. Can you explain that discrepancy?

8           Mr. Chisam. Ranking Member McCaul, the paper governs.  
9 It governs quite simply the respondent did not report on his  
10 tax returns income that he received. These documents,  
11 Exhibits 86 and 87, show -- and Exhibit 95 -- show clearly  
12 that the respondent was told that he had income and that he  
13 requested of Punta Cana and told them where to send that  
14 money. That is unequivocal. He did make statements at some  
15 point, that were not sworn, in a letter to the Speaker that  
16 he read, that suggested that he didn't know. Frankly, there  
17 is no doubt that he did. The evidence in this record, again,  
18 which is in fact the paper here, shows that he knew and that  
19 he failed repeatedly to report his income.

20           I would also note Exhibit Number 5. This was in 2000  
21 and the respondent did not report income for Punta Cana on  
22 his tax return. His amended financial disclosure indicated  
23 that there was between \$2,500 and \$5,000 worth of income. We  
24 don't have an amended tax return for that year. But this  
25 letter, Exhibit Number 5, if you will look at the highlighted

1       portion, "There was no income derived by us from these assets  
2       during the year 2000, and that fact should have been noted in  
3       my financial disclosure statement."

4             Mr. McCaul. And so the committee actually worked with  
5       him to identify this, but it seems it appears from the record  
6       that he continued to deny that his income was to be reported?

7             Mr. Chisam. That is right. He affirmatively stated  
8       that he did not have income and the documents indicate that  
9       he did.

10            Mr. McCaul. And let me close, Madam Chair, and I know  
11       our time is limited, that I agree with Mr. Rangel in his  
12       letter to the Speaker that, as chairman of the Ways and Means  
13       Committee, he should be held to a higher stand. With that I  
14       yield back.

15            Chairwoman Lofgren. The gentleman's time is expired.  
16       Do other members have questions at this time? Mr.  
17       Butterfield.

18            Mr. Butterfield. Thank you very much, Madam Chair. Let  
19       me go back to the question of counsel, if I can do that very  
20       briefly, Mr. Chisam. Did you have any contact with the  
21       Zuckerman law firm, which is the law firm that represented  
22       Mr. Rangel, prior to October 7th about this case, about the  
23       preparation of this case?

24            Mr. Chisam. Congressman, I would say that in the  
25       ordinary course of events in my job, I regularly talk to

1 opposing counsel, and that was the case here. I would note  
2 that --

3 Mr. Butterfield. The fact is you had extensive contact  
4 with his lawyers; is that right?

5 Mr. Chisam. We discussed the case regularly. I want to  
6 be careful in what I say simply because most, if not all, of  
7 those discussions were covered under the blanket of  
8 settlement negotiations and largely would be considered as  
9 such.

10 Mr. Butterfield. I am not asking what they said to you  
11 or you to them, but you did have extensive contact with his  
12 counsel. That wouldn't be privileged, would it?

13 Mr. Chisam. Yes, sir.

14 Mr. Butterfield. Is it true that the law firm simply  
15 withdrew from this case without asking permission from the  
16 committee to do so?

17 Mr. Chisam. Congressman, they filed a letter with the  
18 committee that withdrew --

19 Mr. Butterfield. They just basically filed a letter  
20 saying, We are out of here, we are not representing this man  
21 any longer?

22 Mr. Chisam. They gave me the courtesy of a phone call  
23 shortly before they sent it.

24 Mr. Butterfield. And that was after the date of this  
25 hearing was announced by the chair?

1           Mr. Chisam. I am trying to think. I believe so, yes.  
2 It was close in time.

3           Mr. Butterfield. Let me now speak to the summary  
4 judgment motion. Where specifically in our rules is a motion  
5 for summary judgment addressed?

6           Mr. Chisam. Congressman, I know we like to talk about  
7 this as a motion for summary judgment. I want to kind of put  
8 that little matter to rest. I think that is the closest  
9 analogy there is in the rules of civil procedure for what  
10 this is, but it is not really the same thing as a motion for  
11 summary judgment.

12           What we are saying is the facts are not in dispute and  
13 that you should be able to fulfill your role and go vote. I  
14 am not asking for a judgment as a matter of law that we have  
15 proven the counts. So that is one distinction.

16           But where does it say -- of course, as many things go  
17 with our rules, the rules don't say anything. They are in  
18 fact sort of silent on this issue about what types of  
19 motions. However, the committee's rules do talk about that  
20 at these hearings the chair may consider rulings on evidence,  
21 and it specifically says motions. Now, those motions are  
22 really at the discretion of the committee or the subcommittee  
23 as to what may lie. We believe that this motion does that.

24           Mr. Butterfield. So you feel it is the inherent  
25 authority of this committee to entertain this motion?

1           Mr. Chisam. That is correct, sir.

2           Mr. Butterfield. And did I understand you to say that  
3 Mr. Rangel did not respond to your motion for summary  
4 judgment?

5           Mr. Chisam. He has not responded in writing and not  
6 orally either.

7           Mr. Butterfield. During your investigation of this  
8 matter, could you with some certainty determine who  
9 maintained Mr. Rangel's financial records, whether it was his  
10 chief of staff or his wife or an accountant, who actually  
11 maintained his records?

12          Mr. Chisam. There were several places, Congressman.  
13 Certainly his -- within his family the records were kept most  
14 likely by his wife. He did have an accountant at times for  
15 his tax matters. And his chief of staff, when his chief of  
16 staff returned in 2000, helped him with his financial  
17 disclosure reports. And then he had help from his staff  
18 before that. So there were multiple sources.

19          Mr. Butterfield. Is it clear that different people  
20 performed different functions in his financial life? In  
21 other words, one person may have prepared his disclosure form  
22 or helped him prepare it and another person prepared his tax  
23 returns?

24          Mr. Chisam. I think that is a fair statement.

25          Mr. Butterfield. In all of your investigation of this

1 matter, do you see any evidence of personal financial benefit  
2 or corruption?

3 Mr. Chisam. I see no evidence of corruption. It is  
4 hard to answer the question, personal financial benefit. I  
5 think the short answer is probably no. Do I believe based on  
6 this record that Congressman Rangel took steps to enrich  
7 himself based on his position in Congress? I do not. I  
8 believe that the Congressman, quite frankly, was overzealous  
9 in many of the things that he did and at least sloppy in his  
10 financial -- his personal finances.

11 With respect to the Rangel Center, I think what is  
12 ironic to me is that he could have done this without seeking  
13 permission, without having to come to the committee and ask  
14 permission. If he had only followed a few simple rules. The  
15 committee allows a blanket waiver for solicitations of  
16 501(c)(3) organizations without having to ask us for  
17 permission. Both the college and its fundraising foundation  
18 are 501(c)(3)s, so he could have done this right.

19 Mr. Butterfield. If he sought the waiver and not used  
20 official resources, he could have done this?

21 Mr. Chisam. That is correct, sir.

22 Mr. Butterfield. My last question, Mr. Chisam, is this.  
23 There was some questions to earned income from IRAs and other  
24 instruments, that Mr. Rangel received actual income. And  
25 from what I can gather, that income was reported on his tax

1 return, it was simply not reported on his financial  
2 disclosures?

3 Mr. Chisam. I am going to go with "some times" on that.

4 Mr. Butterfield. I didn't hear you.

5 Mr. Chisam. Some times. There were variances  
6 throughout the entire period with respect to both what and  
7 how accurately amounts were reported.

8 Mr. Butterfield. Thank you. Thank you, Madam Chair. I  
9 yield back.

10 Chairwoman Lofgren. The gentleman yields become. Are  
11 there additional questions? Mr. Conaway is recognized for 5  
12 minutes.

13 Mr. Conaway. Thank you, Madam Chair. I appreciate  
14 that.

15 Mr. Chisam, the -- pull up Exhibit 22, please. Part of  
16 the issue is that Mr. Rangel repeatedly left off -- page 5 of  
17 that, I think, 4 and 5 -- repeatedly left off assets off his  
18 financial disclosure of a material nature. Back up one page,  
19 please. Focus in on the bottom. There is an ING Russia Fund  
20 that was on this amended financial disclosure but is not on  
21 his original. The next page, there are two other accounts,  
22 ING Principal Protection and Congressional IRA. Both of  
23 those are on his amended return which was done by his  
24 forensic accountant, not on his original return. If you take  
25 the high-low range, it is somewhere between \$400,00 and



1       \$850,000 in assets. Were those considered to be material to  
2 his financial statement?

3           Mr. Chisam. In general, Congressman, I think that under  
4 the structure of the House rules, assets by definition are  
5 considered material. They are to be reported.

6           Mr. Conaway. Did Mr. Rangel give any reason during  
7 their conversations over the 2-1/2, 2 years of investigation  
8 as to why these were left off?

9           Mr. Chisam. I think there were various statements. In  
10 general I think he would, if you asked him, likely attribute  
11 it to sloppiness.

12          Mr. Conaway. Do we know the source of where these funds  
13 came from? This is a gentleman who has been in Congress all  
14 these years and from his tax returns doesn't appear to be  
15 super wealthy. But the brownstone apartment that he  
16 inherited from his family and leased for a number of years,  
17 clearly the records were available to report that on his  
18 income tax return, any rationale as to why those same records  
19 weren't used to prepare his financial statement?

20          Mr. Chisam. There is absolutely no indication as to why  
21 those same records were not used, why they didn't cross over.  
22 In answer to your first question, there appear to have been,  
23 just for what it is worth, an uptick in assets that probably  
24 resulted from the sale of his brownstone in 2004.

25          Mr. Conaway. Thank you. That makes sense. Thank you.

1           His forensic accountants went back and computed what the  
2 taxes would have been on the Punta Cana deal. Do we know for  
3 sure that he filed the amended tax returns?

4           Mr. Chisam. We know that he filed amended tax returns  
5 from 2004 forward.

6           Mr. Conaway. And, I assume, paid the taxes associated  
7 with that?

8           Mr. Chisam. We know that he attempted to pay the taxes,  
9 but as you know the IRS has a unique ability to not accept  
10 money.

11           Mr. Conaway. The forensic accountant's report, which is  
12 Exhibit 66 -- we don't need to go into it -- shows most of  
13 that taxable income came in the years that we are told by a  
14 statute of limitations protection that all of us enjoyed.  
15 Did Mr. Rangel avail himself of that statute of limitations  
16 as tolling and not file amended returns for those years that  
17 were no longer open?

18           Mr. Chisam. I understand they did not have -- they  
19 didn't have adequate records for the years that he did not  
20 file.

21           Mr. Conaway. But he didn't pay the back taxes prior to  
22 years that were no longer open under the statute? The  
23 protection supported all of us, but nevertheless --

24           Mr. Chisam. The short answer is no.

25           Mr. Conaway. In your conversation or in your

1 discussion, you and your investigators, did you conclude as  
2 Mr. Rangel would have us believe, that all of these  
3 cumulative repeated errors with deficiencies in his financial  
4 statement were simply inadvertent or unintentional? Did you  
5 conclude that?

6 Mr. Chisam. I have no reason to believe, Congressman,  
7 that he went out of his way to try to mess this up.

8 Mr. Conaway. So you are saying then, sir, that  
9 sloppiness is a defense?

10 Mr. Chisam. I don't believe it is a defense at all. In  
11 fact, I believe that it is a violation of the rules.

12 Mr. Conaway. Pull up Exhibit 541, please. And it would  
13 be page 3699. This is a transcript from a press conference  
14 done by Mr. Rangel in the House gallery press -- House press  
15 gallery. We are going to be looking near the bottom of the  
16 page on 3699. There we go.

17 Let me just read that. No, ma'am, that is not it. Let  
18 me see. Is it 3699? That was it, I am sorry. Let me just  
19 read that. "In conclusion, let me say" -- this is Charlie  
20 speaking, or Mr. Rangel, excuse me, speaking at the press  
21 conference. "In conclusion let me say this. I did not  
22 expect any special treatment because I am a member of  
23 Congress. Whatever mistakes, if any, I have made I am  
24 prepared to make certain that the record is set straight. As  
25 a matter of fact, I truly believe that Members of Congress

1 and those in the public service really have a higher  
2 obligation, than people who vote for them, to set an  
3 example." It is a twisted final phrase.

4 Is this a true and correct copy of the transcript from  
5 that press conference?

6 Mr. Chisam. That is my understanding. To the best of  
7 our knowledge, that is a true and accurate copy.

8 Mr. Conaway. But it is your exhibit?

9 Mr. Chisam. Yes.

10 Mr. Conaway. Yes or no? Why are you wavering?

11 Mr. Chisam. Because I am a lawyer, Congressman.

12 Mr. Conaway. So if Mr. Rangel's lawyer were in here and  
13 he said this is not a true and correct copy of this  
14 transcript, would we toss it out? What would we do?

15 Mr. Chisam. Congressman, Mr. Rangel produced this  
16 document to us.

17 Mr. Conaway. All right. Thank you. I yield back.

18 Chairwoman Lofgren. The gentleman yields back. Do  
19 other members have questions they wish to ask? Mr. Dent.

20 Mr. Dent. Thank you, Madam Chair. I am going to  
21 confine my questions to Mr. Chisam as it relates to the Lenox  
22 Terrace issue. A few things.

23 On page 74 of your summary judgment motion, you state  
24 that the evidence in the record makes clear that the  
25 respondent accepted a favor or benefit in the form of leasing

1 a residential rent-stabilized apartment for his campaign  
2 office and that this violated the terms of his lease, New  
3 York City's zoning regulations, the New York City building  
4 code, and the certificate of occupancy of Lenox Terrace.

5 Could you describe more specifically the zoning and  
6 building regulations that were violated by Mr. Rangel's use  
7 of a campaign office in a residential building? And also,  
8 secondarily, what is the significance in the Lenox Terrace  
9 building about the commercial units above the first floor?

10 Mr. Chisam. The lease that was provided was for living  
11 purposes only. And I think that was for a reason. And the  
12 reason that lease provides that is that every building in New  
13 York, particularly of this size, has what is called a  
14 certificate of occupancy. It tells you what you can use a  
15 building for. And that certificate of occupancy for this  
16 building refers to different zoning laws, and the bottom line  
17 comes to this: Every unit above the first floor of that  
18 building had to be used for residential purposes. And if it  
19 wasn't, it would have violated the zoning restriction as well  
20 as the building code, and that gets you to the certificate of  
21 occupancy.

22 And there are certain exceptions. There is some  
23 permissibility to use a residential unit for a business so  
24 long as you don't use more than 25 percent of the space for  
25 the business and you don't bring people in to work in there.

1           So there is absolutely no circumstance that Mr. Rangel's  
2 use of this particular apartment would not have violated some  
3 law in New York.

4           Mr. Dent. And about the first floor issue?

5           Mr. Chisam. The first floor issue, these buildings --  
6 there is about six of them, and it is designed like many old  
7 buildings in New York; so you can live, you can live and shop  
8 in the same place. It is a large, tall building, and on the  
9 ground floor you can go to the dry cleaners or either a  
10 restaurant.

11          Mr. Dent. And other questions, too. If you could put  
12 up Exhibit Number 508. It is a copy of the original lease  
13 for the apartment 10U that Representative Rangel signed for  
14 his campaign office. On the first page Charles Rangel is  
15 typed as the tenant. And paragraph 1 states that the tenant  
16 shall use the apartment for living purposes only and could  
17 only be occupied by either the tenant named in the lease or  
18 by the immediate family. And it is quite clear that -- it  
19 seems clear anyway that the respondent did not live in that  
20 particular unit.

21          Mr. Chisam. As best -- well, it is absolutely clear  
22 based on everything that we know that he used that unit  
23 solely and exclusively as a campaign office. He had his  
24 staff go in there, they worked in there. No one ever -- I  
25 mean, no one from his family slept in there. He did not use

1 it. And he was quite rather open and notorious about it.

2 Mr. Dent. If you can also put up Exhibit Number 530.  
3 It is a copy of the rental application form.

4 Again, to Mr. Chisam, did the evidence and testimony  
5 confirm that this application form was used for the campaign  
6 office unit?

7 Mr. Chisam. Before the investigative subcommittee, my  
8 recollection and my staff's recollection is that a witness  
9 indicated that this appeared to have come from the file for  
10 that unit.

11 Mr. Dent. You also note that the person named in the  
12 line to occupy that unit is Steven Rangel, Mr. Rangel's son.  
13 Is there any evidence that Mr. Rangel's son ever lived in  
14 that unit?

15 Mr. Chisam. There is absolutely no evidence that he  
16 lived in that unit. To the extent that his son lived with  
17 the Rangels during the relevant time period, he lived on the  
18 16th floor.

19 Mr. Dent. Thank you for that response. And I have a  
20 series of questions that I intended to ask of Mr. Rangel's  
21 counsel, or Mr. Rangel in the absence of counsel, which I  
22 will not do here, but I would be happy to submit them for the  
23 record, Madam Chair.

24 Chairwoman Lofgren. All right. Then those questions  
25 will be submitted for the record.

1 [The information follows:]

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3 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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1           Mr. Dent. I yield back.

2           Chairwoman Lofgren. The gentleman yields back. Do  
3 additional members have questions? Whoever wants. Mr.  
4 Harper, do you have questions?

5           Mr. Harper. Yes, Madam Chair. Thank you very much.

6           Mr. Chisam, earlier you were asked by Mr. Butterfield if  
7 Mr. Rangel had received any personal financial benefit or the  
8 issue of corruption. And I would like to pull up the summary  
9 judgment, if I could, page 59. Is that available on the  
10 screen?

11          Congresswoman Lofgren. I don't think we have that.

12          Mr. Harper. Well, Mr. Chisam, if you could refer, and  
13 members of the committee, refer to page 59 of your motion for  
14 summary judgment. The first full paragraph, the first  
15 sentence says, "Donations to the Rangel Center were a favor  
16 or benefit to the respondent." And then if I could drop down  
17 to the fourth paragraph on page 59 it said, "Respondent also  
18 received benefits for himself. He received a place to house  
19 his papers, including an archivist to collect and organize  
20 these papers."

21          So I would ask, do those things just referred to, just  
22 in that paragraph, did those have value?

23          Mr. Chisam. Well, in my judgment, to answer your  
24 question directly, they do have value, that is to be sure. I  
25 can tell you that those -- the center is, the physical

1 location for the center has never been built. He has never  
2 actually received and he has never done it in his papers  
3 because he is still in Congress, so nothing has actually ever  
4 been received.

5 Do I think it has value? I absolutely think it has  
6 value. But in some respects, its perspective is a little  
7 hard to measure at the moment. But I do believe those would  
8 have had value.

9 Mr. Harper. Sure. And if we were talking about, you  
10 know, cash or monetary contributions, that has an exact  
11 value, we know what that is. But obviously this indeed does  
12 personally benefit Mr. Rangel, does it not?

13 Mr. Chisam. It would have.

14 Mr. Harper. If I could refer you to Exhibit 113. And  
15 Exhibit 113, just by way of information, is an e-mail stream  
16 that is dated December 26, 2006 between Shelly Butler at the  
17 Rangel Center and George Dalley, Rangel's former chief of  
18 staff, and a number of other House staff. And of course it  
19 is a lengthy list.

20 But I would ask you on that lengthy list of foundations  
21 that was faxed to the Rangel, that was used -- congressional  
22 stationery was used on these contacts; is that correct?

23 Mr. Chisam. Can I just take a look and see what this  
24 e-mail is before I answer that question?

25 Mr. Harper. Sure.

1           Mr. Chisam. Congressman, I am having a little -- I  
2 don't want to mess this up. Exactly the question is -- I  
3 just didn't understand the question.

4           Mr. Harper. Okay. And certainly let me clear it up.  
5 And of course in looking at, and I apologize, let's look at  
6 Exhibit 136. And that is what we are on, isn't it -- are we  
7 at 136 -- how many letters were sent regarding the Rangel  
8 Center? And then I want to know if they were all sent on  
9 congressional letterhead, and were they all sent using the  
10 House frank? And so if you need to review that for a moment,  
11 then please do.

12           Mr. Chisam. This exhibit shows a list of foundations,  
13 to our knowledge. And I think the record is pretty clear on  
14 this. Everybody on that list got a letter and it was on  
15 official letterhead. And we know that, at least in the case  
16 of the New York Stock Exchange to Leon Panetta, we have  
17 evidence that the frank was used.

18           Mr. Harper. All right. One concern as we look at how  
19 we are going to proceed here on this motion, whether we call  
20 it summary judgment or however you want to phrase it, while  
21 it is not specifically within the rules, Mr. Chisam, what is  
22 the precedent for a motion like this being offered in lieu of  
23 an adjudicatory hearing involving a House Member?

24           Mr. Chisam. Congressman, the way that I believe the  
25 motion is styled is not actually in lieu of a hearing. I

1 think it would be more in lieu of taking live testimony. In  
2 terms of not taking live public testimony, I think there is  
3 ample precedent before the committee.

4 But this is the hearing, this is offered at the hearing.  
5 The evidence is admitted at the hearing. We are essentially  
6 having a hearing. And the motion simply states that based on  
7 the record before you, you can decide, you can decide today  
8 and you can go back and talk about this case, you can  
9 deliberate on it, you can argue about it, you can agree on  
10 it, but you can right now get to a vote based on what you  
11 have before you.

12 Mr. Harper. So it is your opinion as chief counsel,  
13 this is sufficient, with the evidence that has been admitted  
14 along with the argument on the summary judgment motion, that  
15 we are able to make a decision?

16 Mr. Chisam. Congressman, the facts that we have stated  
17 are not all the facts in this case. We believe that they are  
18 the material facts in this case, and they are ample, ample to  
19 allow you to decide, in our judgment, favorably; meaning in  
20 favor of the counts in the SAV on all 13 counts.

21 Mr. Harper. With that, I yield back, Madam Chair.

22

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1       RPTS JOHNSON

2       DCMN NORMAN

3       [11:20 a.m.]

4               Chairwoman Lofgren. The gentleman yields back. Are  
5 there further questions? Mr. Welch?

6               Mr. Welch. Thank you. Mr. Chisam, did you investigate,  
7 for comparison purposes, other Members of Congress who had  
8 raised funds for an educational institution?

9               Mr. Chisam. Congressman, the jurisdiction of the  
10 subcommittee and of this committee, this subcommittee, so  
11 both the investigative and the adjudicatory subcommittee was  
12 limited to Congressman Rangel.

13              Mr. Welch. Here is the question. Other Members of  
14 Congress have raised money for an educational institution  
15 that has been named after them, correct?

16              Mr. Chisam. Yes.

17              Mr. Welch. So you have no information about what  
18 Members have done that and under what circumstances it has  
19 been done?

20              Mr. Chisam. I don't find it relevant.

21              Mr. Welch. All right. So the basic issue, if I  
22 understood what you are saying, it is permissible for a  
23 Member of Congress to raise funds for an educational  
24 institute that will then be named after the Member of  
25 Congress.

1           Mr. Chisam. That is correct. So long as they do not  
2 use official resources, their letterhead, and the host of  
3 things explained.

4           Mr. Welch. All right. So a person -- I mean this may  
5 not be a great idea for us to allow in Congress, but an  
6 individual in Congress is allowed to solicit funds, and that  
7 includes from campaign donors or from individuals who  
8 actually may have interests before their committee, in order  
9 to establish a nonprofit educational institution that will be  
10 named after them under existing rules in the House of  
11 Representatives and in the U.S. Senate. That is permissible  
12 for Members of Congress to do?

13          Mr. Chisam. Under the committee's general waiver for  
14 solicitations for exactly the type of entities you are  
15 talking about, that is generally true. The one caveat I  
16 would put on that is you cannot directly solicit a lobbyist.

17          Mr. Welch. And the question here with respect to  
18 Mr. Rangel is the way in which he did that, rather than what  
19 it is he actually did; is that correct?

20          Mr. Chisam. The purpose here could have been --

21          Mr. Welch. Just a yes or no on this. Right?

22          Mr. Chisam. You are exactly correct.

23          Mr. Welch. Okay. So basically, if a Member wants to  
24 solicit funds, they have got to, A, get permission, and B,  
25 use the right letterhead. They cannot use congressional

1 letterhead. Right?

2 Mr. Chisam. That is right.

3 Mr. Welch. But they can send that letter to a  
4 corporation, to an individual, whoever they seek to solicit  
5 funds from; correct?

6 Mr. Chisam. On their personal letterhead, sure.

7 Mr. Welch. All right. And the fact that that person or  
8 that individual may have interests before the committee of  
9 jurisdiction on which they sit or chair is not a bar to them  
10 making that solicitation in the first place; correct?

11 Mr. Chisam. In that circumstance, if it is a 501(c)3 or  
12 a 170(c) organization, that is correct.

13 Mr. Welch. All right. On the question of rent control,  
14 I understand that Mr. Rangel had his own family apartment in  
15 the building in question; correct?

16 Mr. Chisam. He had multiple units on the 16th floor of  
17 the same building.

18 Mr. Welch. All right. And my understanding is that in  
19 this investigation about what I think most people think is a  
20 pretty Byzantine process of rent control in New York City,  
21 that the apartment that is the subject of this inquiry was  
22 vacant for several months before Mr. Rangel rented it.

23 Mr. Chisam. That is correct.

24 Mr. Welch. And is it the case that Mr. Rangel did in  
25 fact, or his campaign did in fact pay the highest rate that

1 was allowed under the existing law? .

2 Mr. Chisam. That is correct. The units themselves are  
3 stabilized under New York law. He paid the maximum  
4 rent-stabilized rate.

5 Mr. Welch. And did you inquire as to whether the Olnick  
6 Corporation, his landlord, had a coherent policy as to how it  
7 treated its rent-controlled apartments?

8 Mr. Chisam. That process changed over time throughout  
9 the relevant period in how they dealt with their stabilized  
10 units.

11 Mr. Welch. All right. So basically, what we have here  
12 is a situation where Mr. Rangel, his campaign, paid maximum  
13 rate under law for a rent-controlled apartment that had been  
14 left vacant for several months before his campaign rented it.  
15 Is that right?

16 Mr. Chisam. That is correct. He didn't violate the  
17 rent stabilization laws. Neither did the landlord. This is  
18 violations of the building code and the zoning regulations.

19 Mr. Welch. Okay. Thank you. I have no other  
20 questions. I yield back.

21 Chairwoman Lofgren. I have just a few questions, if I  
22 can. Representative Rangel was represented by counsel for a  
23 substantial period of time, more than 2 years. And one of  
24 the things they did was file a motion to dismiss the SAV at  
25 an earlier stage in the proceedings. And in their written



1       brief -- I would add that that motion was denied by the ISC.  
2       But in their motion, they argued that the charitable  
3       contributions made to the City College of New York in  
4       connection with the Rangel Center cannot be construed as an  
5       improper favor or benefit to Congressman Rangel. And they  
6       went on to argue that the indirect benefits were not favors,  
7       they were integral parts of the center's academic program.  
8       And CCNY, not Congressman Rangel, the City College was the  
9       beneficiary, not Mr. Rangel.

10       Now, if Mr. Rangel had gotten permission and had  
11       solicited these donations in accordance with committee rules,  
12       would you argue that it was a benefit to Mr. Rangel?

13       Mr. Chisam. Had he complied with committee rules, I do  
14       not believe that the donations he solicited from private  
15       entities would have been attributable to him.

16       Chairwoman Lofgren. So the argument is really twofold:  
17       that the process of solicitation was defective, and I think  
18       you have amply made that case in your motion; but that in  
19       some kind of transmogrification, because of the error in  
20       solicitation, it became a gift. And I am having trouble  
21       following that. Do you have citations to support that  
22       position?

23       Mr. Chisam. I do. They are actually listed in the  
24       motion. But I would flip it a little bit. The statute and  
25       the House rule basically -- 5 U.S.C. 7353 and the House rule

1 on gifts essentially prohibit all gifts to Members. It is  
2 blanket. There are exceptions.

3 Now, the solicitation ban is likewise a nearly absolute  
4 prohibition on soliciting donations. The House rule  
5 specifically provides that if somebody else gives money to  
6 somebody else, but the Member knew about it and requested it,  
7 that that gift is attributable to the Member. It is the  
8 indirect gift rule. So that is under the House rule and it  
9 is explicit.

10 Chairwoman Lofgren. I understand that. But if it is an  
11 indirect gift, it would be an indirect gift if you followed  
12 the rules and solicitation as well by your logic. So all of  
13 the people we have approved that solicit for charities are  
14 also violating the rule, according to your argument.

15 Mr. Chisam. And Madam Chair, the letters that you so  
16 very often sign on that contain language that talk about how  
17 when the solicitation is approved, either by the general  
18 waiver or by a waiver issued by the committee, that the  
19 corresponding gift problem -- that gift won't be attributed  
20 so long as the solicitation is proper.

21 Chairwoman Lofgren. Let me ask you another question  
22 regarding the allegation that he received an improper gift  
23 because of the promise that he would have an office and there  
24 would be the archiving of his papers and attendance to that.  
25 In the House, this is something actually I have never agreed

1 with, but it is in our rules. If you receive something from  
2 a public entity it is specifically not a gift in violation of  
3 the gift rules. So that if you go to the UCLA-USC game, if  
4 you sit with USC you have to pay for your tickets; if you sit  
5 with UCLA you do not.

6 City College of New York is a public entity. They were  
7 going to provide this to Mr. Rangel. How could this violate  
8 the gift rule if the gift rule specifically excludes benefits  
9 coming from the public sector?

10 Mr. Chisam. Again, Madam Chair, this is the indirect  
11 part of this gift. It is not the provision directly of the  
12 office, it is how you get the money for the office. And here  
13 Congressman Rangel solicited I think explicitly Gene  
14 Isenberg, who gave about a million dollars in a matched  
15 contribution for the purpose of naming that office and  
16 essentially constructing that office. I think whether you do  
17 it under the letter and spirit of the rules or under the  
18 indirect gift rule, I think it is abundantly clear that that  
19 gift ought to be attributed to Representative Rangel and  
20 would not, in my judgment, be considered a gift when it  
21 happened from the university.

22 Chairwoman Lofgren. Let me just ask a final question.  
23 I am just about out of time. The Statement of Alleged  
24 Violation alleges that Mr. Rangel violated clause 5 of the  
25 Code of Ethics for Government Service. What does committee

1 counsel interpret the legal standard, and specifically the  
2 reasonable person aspect of the standard to be?  
3 Specifically, is the benefit that Mr. Rangel allegedly  
4 received with respect to the Lenox Terrace apartments subject  
5 to the reasonable person, or how do we read that statute?

6 Mr. Chisam. Madam Chair, the text of that reads as  
7 follows: Never discriminate unfairly by dispensing of  
8 special favors or privileges to anyone, whether for  
9 remuneration or not, and never accept for himself or his  
10 family favors or benefits under circumstances which might be  
11 construed by reasonable persons as influencing the  
12 performance of his governmental duties.

13 Chairwoman Lofgren. So the reasonable person really  
14 relates to the second.

15 Mr. Chisam. Everything after the semicolon.

16 Chairwoman Lofgren. All right. Thank you very much for  
17 that. I don't have additional questions. Mr. Conaway, did  
18 you have a follow-up you wanted?

19 Mr. Conaway. Not a follow-up question. I needed to  
20 clarify something. My comments were referenced to some  
21 assets that were on the amended financial statement but left  
22 off the original one.

23 Chairwoman Lofgren. I am sorry, I didn't hear the  
24 beginning of your statement.

25 Mr. Conaway. I just need to clarify something.

1           Chairwoman Lofgren. Okay.

2           Mr. Conaway. My question was about assets that were not  
3 on his original financial statement. I mentioned the ING  
4 Russia Fund. That was a different issue. It was actually on  
5 both the original financial statement at a value of \$1,000 to  
6 \$15,000. It is on the amended financial statement at \$15,000  
7 to \$50,000. So it was a different issue. And I didn't mean  
8 to confuse the --

9           Chairwoman Lofgren. Thank you for that clarification.  
10 At this point really what is before us is not a proposal that  
11 we adopt the SAV, but counsel's motion is that we decide that  
12 there are no material facts in dispute. And that motion is  
13 something that I think we will want to discuss in closed  
14 session. We have heard the arguments. We have had an  
15 opportunity to ask our questions. And unless there are  
16 further matters to come before us on that -- yes, sir,  
17 Mr. McCaul?

18           Mr. McCaul. Thank you, Madam Chair. Just a point of  
19 clarification. I am hopeful this committee will be able to  
20 come to a consensus on all 13 counts. However, if the  
21 committee cannot, that means there is an issue of fact  
22 remaining on those certain counts we can't agree on. Would  
23 that proceed -- if that scenario happens, do we proceed with  
24 the hearing with the live witness testimony?

25           Chairwoman Lofgren. Well, I think the motion before us

1 is really to accept as proven all of the facts in the SAV.  
2 Now, there are two questions before us, the facts and the  
3 law. How we apply the law to those facts is a separate  
4 question that is not covered by the motion before us. Is  
5 that clear?

6 Mr. McCaul. But I do think if there are counts that we  
7 cannot agree on, that we may need to consider having further  
8 evidence, having this trial or hearing proceed on those  
9 remaining counts.

10 Chairwoman Lofgren. Well, I think if we do not -- if  
11 the motion to accept that the facts are as proven were to  
12 fail, then you would be correct. If we accept that none of  
13 the facts are in dispute, then we need to match those facts  
14 to the SAV and see whether as a matter of law the facts  
15 support the allegations sent to us by the ISC.

16 Mr. McCaul. Okay. I understand. Thank you.

17 Chairwoman Lofgren. All right. If there is nothing  
18 further then, we will recess to discuss this motion. We will  
19 recess at least until 1:00. And we will try and give notice  
20 to the respondent and everyone else of at least 15 minutes or  
21 so before we come out into public session, out of fairness.  
22 So with that, we stand in recess.

23 [Whereupon, at 11:34 a.m., the committee proceeded in  
24 Executive Session.]

25

1       RPTS KESTERSON

2       DCMN NORMAN

3       [2:35 p.m.]

4               [Resuming Open Session.]

5               Chairwoman Lofgren. The adjudicatory subcommittee is  
6 back in session pursuant to my authority as chair of the  
7 subcommittee under rule 23(i)(2) of the rules of the  
8 Committee on Standards of Official Conduct. I find, and I  
9 will say the subcommittee finds, that there is no genuine  
10 issue of material fact with respect to any of the counts in  
11 the Statement of Alleged Violations. Accordingly, this  
12 matter should be immediately submitted to the subcommittee to  
13 determine whether any of the counts have been proved as a  
14 matter of law.

15               This ruling does not constitute a ruling that any of the  
16 13 counts have been proved. It is only a holding that no  
17 material fact is in dispute. Accordingly, it is appropriate  
18 for the subcommittee to determine, based on the uncontested  
19 factual record, whether any of the counts have been proved as  
20 a matter of law.

21               The subcommittee will meet in Executive Session to  
22 consider each of the 13 counts contained in the Statement of  
23 Alleged Violations. In its deliberations, the subcommittee  
24 will consider all evidence that was properly entered into the  
25 record in these proceedings.

1           I note that the record includes a number of materials  
2 prepared by Representative Rangel's former counsel in this  
3 matter. Those materials include a motion for a bill of  
4 particulars and a motion to dismiss, both of which were  
5 considered by the investigative subcommittee and denied. In  
6 addition, the record includes a written statement of  
7 Representative Rangel transmitted to this subcommittee. All  
8 of those materials were prepared with the assistance of  
9 counsel and all have been publicly available on the  
10 committee's Web site since July 29th of this year.

11           The motion submitted by committee counsel is also  
12 publicly available on the committee's Web site along with the  
13 entire record. The record includes more than 550 exhibits  
14 and totals more than 4,200 pages. The subcommittee will  
15 determine by a majority vote of its members whether each  
16 count has been proved by clear and convincing evidence based  
17 on the material facts that have been found not to be in  
18 dispute.

19           The subcommittee will then report its findings to the  
20 full committee. If no count is proved, the full committee  
21 will prepare a report to the House based upon the report of  
22 the subcommittee. If any one of the 13 counts in the  
23 Statement of Alleged Violations is proved, the full committee  
24 will conduct a separate hearing to determine what sanction,  
25 if any, the committee should recommend to the House of



1 Representatives.

2 I would like to take this opportunity to thank all of  
3 the participants involved in this proceeding for their time  
4 and attention as well as the Committee on House  
5 Administration chairman, Bob Brady, for his staff in the use  
6 of this hearing room.

7 I would now recognize the ranking member for any  
8 additional comments he may have. If there is no further  
9 business, then, we will recess into Executive Session to  
10 deliberate upon the 13 counts before us. Mr. Dent.

11 Mr. Dent. Just a quick question. I am not a lawyer and  
12 I know a lot of people watching this proceeding probably are  
13 not lawyers either.

14 The Chairwoman. Hopefully not.

15 Mr. Dent. So I just want to get one little piece of  
16 clarification. I know we received about 550 exhibits, but we  
17 have not received the witness testimony, and the decision is  
18 that none of those facts in the documents are in dispute or  
19 being disputed. And I guess the only main point is will  
20 there be any kind of a public process to determine if the  
21 facts prove violations by clear and convincing evidence?

22 The Chairwoman. We will deliberate in Executive Session  
23 on that point and we will return to public session for a  
24 report and whatever further discussion the committee deems  
25 appropriate. We are in recess now.

1           [Whereupon, at 2:38 p.m., the subcommittee recessed, to  
2           proceed in Executive Session.]

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**ADJUDICATORY SUBCOMMITTEE HEARING**  
**IN THE MATTER OF REPRESENTATIVE CHARLES B. RANGEL**  
**OPENING STATEMENT OF CHAIR ZOE LOFGREN**  
**NOVEMBER 15, 2010**

**CHAIR:** The Committee will come to order. I would like the record to reflect that all eight members of the Subcommittee are present.

This hearing of the Adjudicatory Subcommittee of the Committee on Standards of Official Conduct in the Matter of Representative Charles B. Rangel will come to order.

The Constitution authorizes the House of Representatives to discipline its members.

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 that public trust. It is under that authority that we are meeting here today.

This hearing is authorized by House Rule XI, Clause 3, and Committee Rule 23. The purpose of this hearing to determine whether any of the 13 counts included in the Statement of Alleged Violation in the Matter of Representative Charles B. Rangel have been proved by clear and convincing evidence.

On June 17, 2010, a bipartisan Investigative Subcommittee of the Committee on Standards of Official Conduct adopted a Statement of Alleged Violation in the Matter of Representative Charles B. Rangel. Representative Gene Green chaired the Investigative Subcommittee. The Ranking Member of the full Committee, Representative Jo Bonner, served as the Subcommittee's Ranking Member. Representatives Bobby Scott and Doc Hastings also served on the Subcommittee.

The Investigative Subcommittee adopted a Statement of Alleged Violation which includes 13 separate counts. For each count, the Investigative Subcommittee concluded that there is substantial reason to believe that Representative Rangel violated the Code of Official Conduct, or a law, rule, regulation, or other standard of conduct applicable to Representative Rangel's performance of his official duties or the discharge of his official responsibilities as a member of the House of Representatives.

The role of an Adjudicatory Subcommittee is to determine, at a hearing, whether any count of the Statement of Alleged Violation has been proved by clear and convincing evidence. The purpose of this adjudicatory hearing is to do just that. However, it is important to bear in mind that this proceeding is a hearing, not a trial.

Attorneys from the Committee's non-partisan, professional staff are the moving party in these proceedings. Their role is to make a case for the Statement of Alleged Violation adopted by the Investigative Subcommittee.

At the adjudicatory hearing, the burden of proof rests with Committee counsel to establish the facts alleged in each count of the Statement of Alleged Violation by clear and convincing evidence.

Representative Rangel will have an opportunity to present his side of the story, should he wish to do so. A respondent is not required to present a case in his defense, and should Representative Rangel choose not to present a case, the Subcommittee will not and may not draw a negative inference from that fact.

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.

In light of that role, I remind my colleagues that while this hearing is in progress, and while the ethics process continues for this matter, we should continue to refrain from commenting on the facts, the law, or any other aspect of this matter.

In conducting this hearing, the Adjudicatory Subcommittee will follow the procedures established by the rules of the Committee.

The quorum required for the Adjudicatory Subcommittee to conduct any business is a majority plus one, or six members. If at any time the Subcommittee does not have a quorum, the Chair may recess the hearing, and may direct the Clerk to contact the Members who are not present. In addition, the Chair can recess the hearing at any time as needed.

The order of the adjudicatory hearing will be as follows. First, the Subcommittee will hear argument on a motion noticed by Committee counsel. Unless he is under oath, any statements, questions, or arguments that Representative Rangel makes will not be considered evidence in this matter. Each party will have 20 minutes for argument. Members of the Subcommittee will then have an opportunity to ask questions of the parties, should they choose, under the five-minute rule.

Following a ruling on the motion, Committee counsel and Representative Rangel will each be allowed 10 hours to present their case, including the time allotted for opening statements and closing arguments. The order is established by Committee rules.

First, I will recognize Committee counsel and Representative Rangel or counsel for Representative Rangel, for any opening statements they may wish to make. Each party will be limited to one hour for their opening statement.

Each party will then present their case. The order for receiving testimony from witnesses and other pertinent evidence is also established by rule.

Committee counsel will present their evidence and call witnesses first. Representative Rangel will have the opportunity to cross-examine witnesses called by Committee counsel, should he wish to do so.

Next, Representative Rangel will have the opportunity to present evidence and call witnesses, should he choose to do so. Committee counsel will have the opportunity to cross-examine any witnesses Mr. Rangel calls in his defense.

After Representative Rangel finishes his case, Committee counsel may ask to present rebuttal witnesses, as permitted by the Chair.

Members of the Subcommittee will also have the opportunity to ask questions of each party's witnesses under the five-minute rule, unless otherwise directed by the Chair.

After all testimony and evidence has been presented, Committee counsel and Representative Rangel will each be permitted to make a closing argument. Each party will be limited to one hour for their closing argument.

Members of the Subcommittee will then have the opportunity to ask questions of the parties under the five-minute rule, unless otherwise directed by the Chair.

At that time, the members of the Adjudicatory Subcommittee will then meet in executive session to consider each count included in the Statement of Alleged Violation. The Subcommittee will determine by a majority vote of its members whether each count has been proved. The Adjudicatory Subcommittee will then report its findings to the full Committee.

If no count is proved, the full Committee will prepare a report to the House, based upon the report of this Subcommittee.

On the other hand, if any 1 or more of the 13 counts in the Statement of Alleged Violation are proved, the full Committee will conduct a sanctions hearing to determine what sanction, if any, the Committee should recommend to the House.

The allegations included in the Statement of Alleged Violation are significant. We take seriously our obligation to conduct these proceedings fairly, impartially, and with the dignity and decorum befitting any proceedings before the House of Representatives. This is a forum to discharge our responsibilities as set forth in the Rules of the House and the rules of the Committee.

The adjudicatory hearing will be conducted subject to the rules and the decorum of the House of Representatives. All participants will be required to observe strictly and promptly all evidentiary, procedural, and other rules of the Committee and rulings issued in this hearing.

All participants will be required to avoid unruly behavior and inappropriate language. I expect all parties to these proceedings to conduct themselves at all times in a manner that reflects creditably on the House of Representatives. Any breach of decorum by participants or attendees may result in a determination by the Subcommittee to close the remainder of the adjudicatory hearing and to proceed in executive session as permitted by Rule 23(e).

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.

At this time, I recognize Representative Michael McCaul, Ranking Member on the Subcommittee, for his brief opening remarks.

###

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

**Opening Remarks as Prepared**  
**November 15, 2010, 9:00am EDT**

As I stated at the opening hearing last July, this is an important day, both for Mr. Rangel, for this Committee, for the Congress, but most importantly for the American people. Let me be clear, no member of this committee asked for this assignment. Sitting in judgment of a fellow member and colleague is very difficult for all of us. But we accept our responsibility here today. We serve for no other reason than to protect the honor, integrity and credibility of this institution often referred to as the People's House.

The American people's confidence in us is at historic lows. They want their elected representatives held accountable for their actions just as they are held accountable as private citizens. It is my sincere hope that these public, televised hearings will help increase transparency and accountability and restore much needed trust in the House as an institution.

Our responsibility as Judges in this matter is to be fair and impartial. There is no place for presumed guilt before innocence in this process and there will not be in this case.

Hearings of this kind are rare and historic. These hearings follow a 21 month long bi-partisan investigation. An investigation that received sworn testimony from nearly 50 witnesses, and over 28,000 pages of documents. An investigation that produced a 13 Count Statement of Alleged Violations. And over 500 exhibits that have been placed on the Committee's website.

These allegations, if proven, would demonstrate that Mr. Rangel violated multiple provisions of the House Rules and federal statutes. As Judges we must determine whether these allegations were proven by "clear and convincing evidence."

On numerous occasions the Respondent, Mr. Rangel, has requested public hearings, a right that he is afforded under the Committee Rules. Today, this hearing affords him the opportunity to be heard. And as Judges in this matter it is our responsibility to make sure the process is both fair and dignified. As a former federal prosecutor in the Public Integrity Section at the Department of Justice due process is nothing new to me. It is guaranteed by our Constitution, and it is a responsibility I take very seriously.

So as we prepare to hear the evidence against one of our most tenured colleagues in the House, we need to ensure we have done everything we can to reassure the American public 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.

# # #



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**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-4603**

August 12, 2010

**COMMITTEE ON THE JUDICIARY**

CHAIRMAN, SUBCOMMITTEE ON  
CRIME, TERRORISM AND HOMELAND SECURITY

SUBCOMMITTEE ON THE CONSTITUTION,  
CIVIL RIGHTS AND CIVIL LIBERTIES

SUBCOMMITTEE ON  
COMMERCIAL AND ADMINISTRATIVE LAW

**COMMITTEE ON  
EDUCATION AND LABOR**

SUBCOMMITTEE ON EARLY CHILDHOOD,  
ELEMENTARY AND SECONDARY EDUCATION

SUBCOMMITTEE ON  
HEALTHY FAMILIES AND COMMUNITIES

**COMMITTEE ON THE BUDGET**

The Honorable Zoe Lofgren, Chair  
Committee on Standards of Official Conduct  
HT-2, The Capitol  
Washington, DC 20515

Dear Chair Lofgren:

Attached are my views dissenting from those expressed by a majority of the investigative subcommittee in the Statement of Alleged Violation and other now public documents in *In the Matter of Representative Charles B. Rangel*. While I agree with my colleagues that Representative Rangel violated various House Rules and other applicable standards, I believe that the record lacks evidence creating a "substantial reason to believe" that Representative Rangel engaged in conduct in violation of clause 5 of the Code of Ethics for Government Service, the House gift rule, or the criminal Franking statute. These counts should not have been charged in the Statement of Alleged Violation and cannot be proven by the higher "clear and convincing evidence" standard at trial. Based on the sanctions levied against Members by the Standards Committee and the House of Representatives in prior cases, a letter of reproof is the appropriate sanction for Representative Rangel's conduct. However, the investigative subcommittee's commitment to including counts involving corrupt and criminal conduct in the Statement of Alleged Violation and insisting on excessive sanction of reprimand prevented the prompt and appropriate resolution of this matter.

The record is clear that Representative Rangel engaged in irresponsible conduct over the course of several years that resulted in numerous violations of House Rules and other applicable standards. Representative Rangel's conduct was not, however, corrupt or criminal, as explicitly and implicitly alleged in the Statement of Alleged Violation and does not warrant a sanction of reprimand. Representative Rangel has a long history of working to expand educational opportunities for disadvantaged minority youth and believed that doing so was part of his official duties to represent the 15<sup>th</sup> congressional district of New York. In his zeal to support CCNY's efforts to establish the Rangel Center for Public Service, Representative Rangel failed to comply with the congressional solicitation rules. Representative Rangel's solicitations on behalf of CCNY would have been permissible under House Rules if he had followed these instructions. The Standards

Committee has never issued any public guidance that failure to comply with the solicitation rules will also result in a violation of the House gift rule. The investigative subcommittee did not find any evidence that Representative Rangel was engaged in any *quid pro quo* relationship with Nabors Industries, Nabors Industries CEO Eugene Isenberg or any other foundation or corporate parent that donated to CCNY for the Rangel Center or that Representative Rangel otherwise violated the federal bribery or illegal gratuity statute. Despite this fact, the Statement of Alleged Violation now seeks to convert donations to CCNY for the Rangel Center to benefit disadvantaged minority youth into impermissible and corrupt gifts to Representative Rangel.

Representative Rangel also made numerous errors in his Financial Disclosure statements and tax returns. This conduct is particularly troubling given Representative Rangel's leadership positions on the House Committee on Ways and Means during the relevant period. The Standards Committee has recommended and the House of Representatives has imposed a reprimand against Members who omitted information on their Financial Disclosure statements that was evidence of corruption, such as a conflict of interest, a financial interest in legislation or gifts of substantial value from individuals under investigation by the Standards Committee. The investigative subcommittee has not made any such finding regarding Representative Rangel. Representative Rangel also failed to check the box on his Financial Disclosure statements to indicate the fact that he had received non-cash income related to his vacation property in the Dominican Republic. The investigative subcommittee reviewed this business deal and did not find that Representative Rangel received any impermissible benefit. Although Representative Rangel failed to include on his taxes technical income attributable to non-cash transactions, such as forgiveness of interest and reduction of principle, during the course of this investigation Representative Rangel hired a forensic accountant to resolve his back taxes and has since paid the maximum amount. Members of Congress routinely make errors on their Financial Disclosure statements and are allowed to correct these mistakes without sanction. Here, however, the sheer number of errors and the large amount of money involved with Representative Rangel's deficient Financial Disclosure statements and taxes warrant a sanction of a letter of reproof.

Representative Rangel's use of a rent-stabilized apartment as a campaign office also did not violate House Rules. Based largely on the testimony of attorneys from the New York Department of Housing and Community Renewal (DHCR), the investigative subcommittee did not find that Representative Rangel violated any laws related to his tenancy in the apartment. Representative Rangel rented the apartment after it had remained vacant for several months; he did not pass over anyone else on a waiting list. Even if Representative Rangel's landlord allowed his non-conforming use of apartment 10U, the Olnick Organization never had a coherent policy on the issue and allowed other tenants to use rent-stabilized units for business purposes. An Olnick representative and a New York DHCR official each testified that Representative Rangel paid the maximum rent allowed under the law for his campaign office and that renting the apartment as a campaign office was not illegal. Representative Rangel made no effort to hide the fact that he was using the apartment in this

way; his rent for the campaign office was paid for using campaign checks. Representative Rangel's use of a rent-stabilized apartment as a campaign office may be politically embarrassing, but it was not illegal. Members of Congress often face public relations implications arising from their private conduct, such as when a Member purchases a foreign car. Despite this fact, as long a Member is paying market value or commercially reasonable terms for the item or service without discount, he or she should be exempt from review by the Standards Committee. Representative Rangel should have been afforded the same treatment.

I do not condone improper conduct by any Member of the House, but the circumstances of this case are not consistent with the precedents of the Standards Committee where a Member has received or the Committee has recommended a reprimand. There is no evidence that Representative Rangel attempted to conceal a conflict of interest or engaged in any of the corrupt conduct that has traditionally warranted a reprimand. Representative Rangel's conduct is the result of good faith mistakes and misunderstandings of legal standards and the scope of his official duties. His violations of House Rules were caused by his sloppy and careless recordkeeping, but were not criminal or corrupt. Representative Rangel has already relinquished his position as Chairman of the House Committee on Ways and Means as a result of these allegations. By contrast, when Representative Newt Gingrich was reprimanded by the House of Representatives, he continued to serve as Speaker of the House. Furthermore, Representative Rangel did not submit false statements during the course of the investigative subcommittee's work that delayed the investigation or wasted House resources, which was an aggravating factor in the *Gingrich* matter. The Standards Committee should also consider Representative Rangel's decision to hire a forensic accountant to assist him in amending his Financial Disclosure statements and other mitigating factors. The Standards Committee's precedents are replete with examples of Members who engaged in more serious conduct than Representative Rangel, but have not suffered as significant consequences as he has already endured.

Representative Rangel has acknowledged his numerous mistakes on his taxes, Financial Disclosure statements and in his solicitations on behalf of CCNY. It is unfair to force Representative Rangel to defend himself against allegations of criminal law, corruption and gift taking which are unlikely to be proven in a public trial. The investigative subcommittee did not find evidence of bribery, an illegal gratuity, a conflict of interest or the use of his official position for personal financial gain. Representative Rangel should not accept an excessive punishment for alleged violations that he did not commit and which should not have been charged. Members of Congress must adhere to the highest moral and ethical principles. However, those moral and ethical principles must be applied fairly and uniformly to all Members, including Representative Rangel. For these reasons and those outlined in the attached submission, I must respectfully dissent from the views expressed by a majority of the investigative subcommittee in the Statement of Alleged Violation and other now public documents in *In the Matter of Representative Charles B. Rangel*.

The Honorable Zoe Lofgren  
Page 4

Although I understand that Standards Committee rules may not explicitly authorize dissenting views from Members of the investigative subcommittee to the adjudicatory subcommittee, I feel compelled to express my views at this time, as I now believe that Committee rules do not prohibit me from doing so.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bobby Scott', written in a cursive style.

Robert C. "Bobby" Scott

Member of Congress

**ROBERT C. "BOBBY" SCOTT**  
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**House of Representatives**  
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**COMMITTEE ON THE JUDICIARY**

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SUBCOMMITTEE ON  
HEALTHY FAMILIES AND COMMUNITIES

**COMMITTEE ON THE BUDGET**

November 4, 2010

The Honorable Zoe Lofgren, Chair  
The Honorable Jo Bonner, Ranking Member  
Committee on Standards of Official Conduct  
HT-2, The Capitol  
Washington, DC 20515

Dear Chair Lofgren and Ranking Member Bonner:

Attached are a cover letter and my views dissenting from those expressed by a majority of the Investigative Subcommittee in the Statement of Alleged Violation and other now public documents in *In the Matter of Representative Charles B. Rangel*. I provided preliminary drafts of these documents to Committee counsel in July and would now like to make my complete views available to the Members of the Adjudicatory Subcommittee. Members can contact the Standards Committee's Chief Counsel, Blake Chisam if they would like to obtain a copy of my complete views.

On July 29, 2010, the Investigative Subcommittee transmitted the evidence it gathered in this matter to the Standards Committee. The attached document provides my analysis of that same evidence based on my review of the applicable legal standards and the precedents of both the Standards Committee and the House of Representatives. Members of the Rangel Adjudicatory Subcommittee should be afforded the opportunity read and consider the conclusions reached by both the majority of the Investigative Subcommittee, as reflected in the forty-one page Statement of Alleged Violation, and the conclusions reached by a minority of the Investigative Subcommittee, as reflected in the views I drafted. The Statement of Alleged Violation outlines the facts and legal authority underlying the counts charged by the majority of the Investigative Subcommittee. Fairness dictates that the Members of the Adjudicatory Subcommittee consider the facts and legal authority supporting my dissenting views; these due process concerns are heightened by Representative Rangel's lack of legal counsel. After reflecting on the both the majority and the minority views of the Investigative Subcommittee, as well as the public submissions provided by Representative

Rangel, the Adjudicatory Subcommittee will be better equipped to evaluate the evidence and arguments presented by Committee counsel and Representative Rangel during an adjudicatory hearing.

I further request that my attached views be made public along with the Investigative Subcommittee's Statement of Alleged Violation and other documents made available to the public on July 29, 2010. During the Adjudicatory Subcommittee's organizational meeting, Ranking Member Bonner made a public statement suggesting that Members of the Investigative Subcommittee ultimately reached unanimous agreement as to the counts in the SAV, Investigative Subcommittee Chairman Green also made statements to the media that the Investigative Subcommittee would have recommended that Representative Rangel receive a sanction of reprimand for his conduct. Both of these public statements misconstrue the Investigative Subcommittee's proceedings and fairness demands that my views be included in the public record. Committee counsel responsible for prosecuting the Statement of Alleged Violation have already had an opportunity to review my dissenting views. If my views are not made available to the public, then Representative Rangel should at least be afforded the same opportunity to review them as Committee counsel. Thank you in advance for your consideration.

Sincerely,



Robert C. "Bobby" Scott

Member of Congress

cc: The Honorable G.K. Butterfield  
The Honorable Kathy Castor  
The Honorable Ben Chandler  
The Honorable K. Michael Conaway  
The Honorable Charles Dent  
The Honorable Gregg Harper  
The Honorable Michael McCaul  
The Honorable Peter Welch

HOUSE OF REPRESENTATIVES

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COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

INVESTIGATIVE SUBCOMMITTEE

IN THE MATTER OF REPRESENTATIVE CHARLES B. RANGEL

MINORITY VIEWPOINT OF  
REPRESENTATIVE ROBERT C. "BOBBY" SCOTT

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I respectfully dissent from the views expressed by a majority of the investigative subcommittee in the Statement of Alleged Violation and other public documents arising from *In the Matter of Representative Charles B. Rangel*. While in many cases, minority views have been brief, I believe a more lengthy explanation is appropriate here both because of the numerous and complex issues involved and because of the long duration of this investigation. The following explains how my views differ from that of my colleagues on the investigative subcommittee, as well as provides the factual and legal bases for those differences.

## I. Introduction

I agree with my colleagues on the investigative subcommittee that Representative Rangel's violations of various House Rules and other applicable standards warrant a serious sanction. However, based on the facts of this case and the sanctions levied against Members by the House of Representatives and the Committee on Standards of Official Conduct (the Standards Committee) in prior cases, a letter of reproof, rather than a reprimand, is the appropriate sanction for Representative Rangel's conduct. The Standards Committee has consistently relied on prior Committee reports and findings to determine appropriate sanctions for a Member's violation of House Rules.<sup>1</sup> I certainly do not condone improper conduct by any Member of the House, but the circumstances of this particular case are not consistent with the prior precedents of the Standards Committee where a Member has received or the Committee has recommended a reprimand.

I also agree with my colleagues that the evidence in this matter shows that Representative Rangel violated House Rules and other standards related to his solicitation of donations for the City College of New York's (CCNY) Rangel Center, as well as the Ethics in Government Act and House Rule XXVI related to errors and omissions on his Financial Disclosure statements and taxes. These violations are particularly troubling given Representative Rangel's leadership position on the House Committee on Ways and Means throughout the relevant period of this investigation. The totality of this conduct failed to "reflect creditably on the House."<sup>2</sup> However, this extensive investigation has also left me with doubts and questions that I believe, in all fairness, should be resolved in favor of Representative Rangel. Many of the counts listed in the Statement of Alleged Violation are duplicative of other counts or lacked sufficient evidence to charge. Specifically, I believe the record lacks evidence creating a "substantial reason to believe"<sup>3</sup> that Representative Rangel committed the following counts included in the investigative subcommittee's adopted and transmitted Statement of Alleged Violation:

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<sup>1</sup> See e.g., House Comm. on Standards of Official Conduct, *In the Matter of Representative Robert L.F. Sikes*, H. Rep. 94-1364, 94<sup>th</sup> Cong., 2d Sess. (July 23, 1976); see also House Comm. on Standards of Official Conduct, *In the Matter of Representative George V. Hansen*, H. Rep. 98-891, 98th Cong., 2d Sess. (1984).

<sup>2</sup> House Rule XXIII, cl. 1.

<sup>3</sup> Committee on Standards of Official Conduct Rule 19(f).

1. Count II: Conduct in Violation of Code of Ethics for Government Service, cl. 5 (related to Representative Rangel's solicitations on behalf of the City College of New York)
2. Count III: Conduct in Violation of the House Gift Rule
3. Count V: Conduct in Violation of the Criminal Franking Statute
4. Count X: Conduct in Violation of Code of Ethics for Government Service, cl. 5 (related to Representative Rangel's use of a rent-stabilized apartment as a campaign office)

These counts should not have been charged in the Statement of Alleged Violation and cannot be proven by the higher "clear and convincing evidence" standard at trial.

In addition to the counts of the Statement of Alleged Violation that are not sustained by the evidence in the record, I also write to express my opposition to the general tone of the Statement of Alleged Violation and other investigative subcommittee documents made public in this matter. The central facts to this investigation are that Representative Rangel sought to facilitate the creation of an academic program that would inspire disadvantaged minority youth to pursue a career in public service. He believed his involvement in this process was part of his official duties. In his zeal to assist CCNY in building the Rangel Center for Public Service, Representative Rangel failed to adhere to the Standards Committee's guidance regarding how to permissibly solicit on behalf of a 501(c)(3) organization. Members are allowed to solicit on behalf of 501(c)(3) organizations, even using their "personal titles" such as "Member of Congress," "Representative," "Congressman," "Congresswoman," "chair or ranking member of a full committee, or as a member of the House leadership" to do so.<sup>4</sup> In fact, Members are permitted to solicit charitable donations from executives and officers of companies that have business before the House of Representatives as long as they follow the rules listed in the House Ethics Manual. The Statement of Alleged Violation now seeks to characterize Representative Rangel's efforts to expand educational opportunities for young, poor people in his district as an impermissible and corrupt gift simply because he failed to follow all of the Standards Committee's instructions on how to solicit.

Throughout his tenure in Congress, Representative Rangel has left personal matters, such as the filing of his taxes and his Financial Disclosure statements to his wife and members of his staff to handle. Representative Rangel admitted that he made fulfilling these responsibilities less of a priority than his work on behalf of his constituents and expressed regret that he did not exercise sufficient care to ensure that he filed accurate tax returns and Financial Disclosure statements from year to year.<sup>5</sup> Traditionally, mistakes on Financial Disclosure statements are

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<sup>4</sup> 2008 *House Ethics Manual* at 181.

<sup>5</sup> Interview of Charles B. Rangel (hereinafter Rangel Int. Tr.) at 164.

corrected without sanction,<sup>6</sup> but because of the scope and amount of Representative Rangel's mistakes, the formal sanction of a letter of reproof is appropriate.

Finally, Representative Rangel leased a rent-stabilized apartment in Harlem's Lenox Terrace complex after it had been vacant for several months<sup>7</sup> and began using it as a campaign office. State officials testified before the investigative subcommittee that Representative Rangel's exclusive use of apartment 10U as a campaign office was permitted under the rent stabilization code.<sup>8</sup> Landlords have the ultimate right to enforce lease terms or pursue legal actions for non-conforming uses. Representative Rangel's landlord had no policy in place for dealing with non-conforming uses and had rational business reasons to allow tenants, including Representative Rangel and others, to maintain their non-conforming use. The fact is that Representative Rangel paid the maximum legal rent for apartment 10U and did not violate any of New York's rent stabilization laws. The sanction of reprimand is usually reserved for corrupt or criminal conduct; the investigative subcommittee made no such finding here.

While Representative Rangel's conduct was disturbing, it was not corrupt. Representative Rangel's violations of House Rules concerning solicitations and other applicable standards were based on his erroneous belief that soliciting donations on behalf of CCNY's Rangel Center were a part of his official congressional duties. These rules do not have an intent element. The investigative subcommittee has also made no allegation that Representative Rangel was engaged in any *quid pro quo* relationship with Nabors Industries, Nabors Industries CEO Eugene Isenberg or any other foundation or corporate parent that donated to CCNY for the Rangel Center. The investigative subcommittee found no evidence that Representative Rangel violated the federal bribery or illegal gratuity statutes. Likewise, Representative Rangel's errors and omissions in his federal tax returns and Financial Disclosure statements were the result of his failure to properly review documents prepared by his wife and members of his congressional staff, but do not reflect an intention to conceal information from the Standards Committee or the Internal Revenue Service. Representative Rangel has taken great effort and expense to correct these errors over the course of this investigation, including paying back his taxes. The investigative subcommittee has not accused Representative Rangel of violating the False Statements Act or committing tax evasion, nor has any indictment alleging violations of these statutes been issued against Representative Rangel. Finally, although I do not agree that Representative Rangel's use of a rent-stabilized apartment as a campaign office violated any House Rules, even if it did, such conduct was predicated on Representative Rangel's justifiable belief that his conduct did not violate any laws, a belief also held by Representative Rangel's landlord and attorneys for the New York State Department of Housing and Community Renewal. Representative Rangel's conduct is mitigated by both the fact that the unit had previously been vacant for several months

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<sup>6</sup> See House Comm. on Standards of Official Conduct, *In the Matter of Representative Geraldine A. Ferraro*, H. Rep. 98-1169, 98th Cong., 2d Sess. (1984).

<sup>7</sup> See CSOC.CBR.00000004, CSOC.CBR.00000008.

<sup>8</sup> Interview of Gerald Garfinkle and Sheldon D. Melnitsky (hereinafter Garfinkle and Melnitsky Int. Tr.) at 31.

and the fact that he paid the maximum legal rent that his landlord could have collected if the landlord rented the unit to someone else.

In reviewing Representative Rangel's conduct, there is no evidence that his conduct had the intention to circumvent applicable legal standards, to achieve personal financial gain or to defraud the public. Representative Rangel's conduct was sloppy and careless, but it was not corrupt. The Statement of Alleged Violation's discussion of Representative Rangel's meetings with representatives of Nabors Industries, service on the board of the Ann S. Kheel Charitable Trust and his ownership interest in the Punta Cana development creates the impression that Representative Rangel engaged in impropriety when no such finding was made. Representative Rangel simply failed to adequately report facts that he was required to disclose and has admitted to such conduct. The magnitude of these failures compels a response from this Committee and that appropriate response is the sanction of a letter of reproof, not a reprimand. Counts XI and XII of the Statement of the Alleged Violation, Conduct in Violation of Code of Ethics for Government Service, cl. 2 and Conduct in Violation of the Code of Conduct: Letter and Spirit of House Rules respectively, are duplicative of counts already charged. The investigative subcommittee should have given more consideration to these facts in drafting its Statement of Alleged Violation and public documents as well as in recommending an excessive sanction of reprimand. The Standards Committee should consider these facts now. The "spirit" rule does not absolve Committee counsel from meeting its burden of proving the "letter" of each count of the Statement of Alleged Violation by "clear and convincing evidence" at an adjudicatory hearing.

## II. Sanctions

### A. A Public Letter of Reproof is the Appropriate Sanction in this Matter

A public letter of reproof from the Standards Committee is a significant sanction "intended to be a rebuke of a Member's conduct issued by a body of that Member's peers acting, as the Standards Committee, on behalf of the House of Representatives."<sup>9</sup> Based on Representative Rangel's conduct in this matter and the prior precedents of the Standards Committee, a public letter of reproof is the appropriate sanction in this matter. Sanctions should be determined based on a "well-established" approach "guided by several important considerations—the nature of the violation and factors in mitigation."<sup>10</sup> The Standards Committee acknowledges that "it has been the *character* of the offenses ... which establish the level of punishment imposed, not the cumulative nature of the offenses."<sup>11</sup> The Committee recommended the sanction of reprimand where Members were found to have had inappropriate sexual

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<sup>9</sup> See e.g., House Comm. on Standards of Official Conduct, *In the Matter of Representative E.G. "Bud" Shuster*, H. Rep. 106-979, 106th Cong., 2d Sess. at 113 (2000).

on Standards of Official Conduct, *In the Matter of Representative Earl F. Hilliard*, H. Rep. 107-130, 107th Cong., 1st Sess. at xi-xii (2001).

<sup>10</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative Richard H. Stallings*, H. Rep. 100-382, 100<sup>th</sup> Cong., 1st Sess. at 4 (1987).

<sup>11</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative George V. Hansen*, H. Rep. 98-891, 98th Cong., 2d Sess. 390 (1984).

relationships with House pages.<sup>12</sup> The “character” of Representative Rangel’s conduct is not of comparable severity to the conduct in those matters or others where the Committee has recommended a reprimand, but does warrant Committee action in the form of a letter of reproof.

1. The Standards Committee has Imposed the Lesser Sanction of An Admonishment Under Circumstances Involving Conduct More Serious than that Involving Representative Rangel

The Standards Committee has publicly admonished Members for a wide range of violations, including conduct more serious than that engaged in by Representative Rangel here. In 2003, Representative Nick Smith made several public allegations regarding the conduct of Members during a floor vote for the Medicare Prescription Drug Act.<sup>13</sup> Among them was that “he was offered \$100,000 for his son’s congressional campaign to succeed him in exchange for his vote in favor of the Medicare bill.”<sup>14</sup> After an extensive review of these claims, an investigative subcommittee found that many of Representative Smith’s allegations of bribery were “overstated”<sup>15</sup> and that his overstatement could support a violation of House Rule XXIII, Clause 1, as tending to impugn the House as an institution.<sup>16</sup> The investigative subcommittee also found that then Majority Leader Tom DeLay offered to trade his endorsement of Representative Nick Smith’s son’s congressional candidacy “in exchange for Representative Nick Smith’s vote in favor of the Medicare Prescription Drug Act.”<sup>17</sup> Representative Candice Miller made “a specific and unprovoked threat of retaliation against Representative Smith because of his vote in opposition to the Medicare Prescription Drug Act.”<sup>18</sup> The Committee concluded Representative Miller’s statements were improper and contributed to the public airing of alleged misconduct related to the Medicare Prescription drug vote, which “risked impugning the reputation of the House of Representatives.”<sup>19</sup> Representatives Smith and Miller, as well as Majority Leader DeLay, were each publicly admonished regarding their conduct in this matter.<sup>20</sup>

The Standards Committee has also admonished a Member for conduct related to impermissible campaign solicitations under circumstances suggesting corruption after the Member received an explicit warning from the Committee to avoid such conduct. In 2004, the Committee issued a public letter admonishing then Majority Leader Tom DeLay for participating

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<sup>12</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative Gerry E. Studds*, H. Rep. 98-295, 98th Cong., 1st Sess. at 1 (1983); *see also*, House Comm. on Standards of Official Conduct, *In the Matter of Representative Daniel Crane*, H. Rep. 98-296, 98th Cong., 1st Sess. at 1 (1983).

<sup>13</sup> House Comm. on Standards of Official Conduct, *Investigation of Certain Allegations Related to Voting on the Medicare Prescription Drug, Improvement, And Modernization Act of 2003*, H. Rep. 108-722, 108<sup>th</sup> Cong., 2d Sess. at (2004).

<sup>14</sup> *Id.* at 39.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 40.

<sup>17</sup> *Id.* at 37.

<sup>18</sup> *Id.* at 41.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 44.

in and facilitating an energy company fundraiser, which created an appearance that “donors were being provided special access to [him] regarding the then-pending energy legislation.”<sup>21</sup> The fundraiser “took place just as the House-Senate conference on major energy legislation, H.R. 4, was about to get underway.”<sup>22</sup> Throughout the duration of the golf fundraiser, an executive from Westar Energy, Inc. spent the day sharing a golf cart with one of Representative DeLay’s aides and discussed the company’s interest in legislation with the aide.<sup>23</sup> The Standards Committee noted that the legislation “was of critical importance to the [fundraiser’s] attendees” and cited “the fact that [DeLay was] in a position to significantly influence the conference, both as a member of the House leadership and, by action taken about a week and a half after the fundraiser, your appointment as one of the conferees” created the appearance of “impermissible special treatment or access.”<sup>24</sup> Representative DeLay was also cited for his “intervention in a partisan conflict in the Texas House of Representatives using the resources of a Federal agency, the Federal Aviation Administration.”<sup>25</sup> Despite Representative DeLay’s conduct and leadership position, a public letter of reproof was deemed the appropriate sanction.

The ethical standards at issue regarding Representative DeLay were the impermissible solicitation and receipt of campaign contributions in return for legislative assistance, the use of corporate political contributions in violation of state law, and the improper use of official resources for political purposes.<sup>26</sup> Prior to that, during the 105<sup>th</sup> Congress, the Standards Committee dismissed a complaint that Representative DeLay improperly linked campaign contributions to official actions and improper political favors for his brother, a registered lobbyist.<sup>27</sup> In this earlier matter, the Standards Committee sent Representative DeLay a private letter and advised him not to create the impression that he would consider an individual’s request for access or for official action based on campaign contributions.<sup>28</sup> The Standards Committee deemed a public admonishment of Representative DeLay as the appropriate response to his conduct violating House Rules related to campaign solicitations and contravening the Committee’s previous private mandate to him. Representative Rangel’s conduct in this matter did not involve any exchange of favors for official action or access; the investigative subcommittee did not find that Representative Rangel’s engaged in any *quid pro quo* or other conduct implicating the bribery or illegal gratuities statute. Representative DeLay’s conduct was exacerbated by his leadership position in the House of Representatives, but he was not asked or required to relinquish this position as part of any sanction; Representative Rangel has already stepped down as Chair of the House Ways and Means Committee as a result of this investigation.

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<sup>21</sup> Public Statement, dated October 6, 2004, from Committee on Standards of Official Conduct regarding Representative Tom DeLay, available at <http://ethics.house.gov/Investigations/Default.aspx?Section=16>.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* A separate allegation was deferred due to an open state grand jury investigation.

<sup>27</sup> House Comm. on Standards of Official Conduct, *Summary of Activities One Hundred Fifth Congress*, H. Rep. 105-848, 105<sup>th</sup> Cong., 2d Sess. at 9-10 (1999).

<sup>28</sup> *Id.*

2. The Standards Committee has Recommended a Letter of Reproval Under Similar and More Serious Circumstances than are Involved in this Matter

The Standards Committee has issued a letter of reproval in matters involving equally and more serious and extensive violations of House Rules, federal laws and applicable standards than are at issue here. During the 107<sup>th</sup> Congress, the Standards Committee imposed a letter of reproval on a Member who misappropriated campaign funds for personal use over the course of several years. In *In the Matter of Representative Earl F. Hilliard*,<sup>29</sup> the Standards Committee concluded that Representative Hilliard used campaign funds to make loans to individuals that were not attributable to any bona fide campaign or political purpose, pay salary and benefits for individuals who performed work for corporations owned by Representative Hilliard and his family between 1992 and 1996, and repay personal and corporate debts. Representative Hilliard also used campaign funds to pay rent in excess of fair market value to corporations that he and his family owned.<sup>30</sup> The Standards Committee noted that Representative Hilliard attempted to conceal many of these violations, but was unable to find that he failed to comply with financial disclosure requirements because the financial documents for Representative Hilliard's companies were poorly maintained and inconclusive.<sup>31</sup>

Despite these numerous violations over the course of several years, the Standards Committee found that a letter of reproval was an appropriate sanction in part because Representative Hilliard agreed to settle the matter.<sup>32</sup> In so doing, Representative Hilliard admitted to all of the allegations in the Statement of Alleged Violation and "acknowledged that he violated House Rules and that he engaged in a pattern and practice of conduct that did not reflect creditably on the House of Representatives."<sup>33</sup> The Standards Committee also noted that, "[i]n concluding that a letter of reproval is an appropriate sanction here, the Investigative Subcommittee also gave considerable weight to the fact that its detailed findings regarding the conduct of Representative Hilliard would be fully, clearly and, most importantly, publicly aired."<sup>34</sup> However, "[t]he four Members of the Investigative Subcommittee also unanimously agreed that, absent a settlement, the violations to which Representative Hilliard admitted constituted the type of serious conduct that could merit the imposition of a reprimand as a sanction."<sup>35</sup> This conclusion was based on factors "including the demonstrated systematic and deliberate conversion of campaign funds by Representative Hilliard to personal use, and by what the Investigative Subcommittee found to be the lack of complete cooperation and candor by Representative Hilliard and his counsel during the investigative conclusion."<sup>36</sup> Although

<sup>29</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative Earl F. Hilliard*, H. Rep. 107-130, 107<sup>th</sup> Cong., 1st Sess. (2001).

<sup>30</sup> *Id.* at 13, 34, and 39.

<sup>31</sup> *Id.* at 100-101.

<sup>32</sup> *Id.* at 99-102.

<sup>33</sup> *Id.* at 102.

<sup>34</sup> *Id.* at 101.

<sup>35</sup> *Id.* at 101.

<sup>36</sup> *Id.*

Representative Rangel and the investigative subcommittee were unable to reach a settlement of this matter, none of the factors in the *Hilliard* matter that would have escalated the sanction to more than a letter of reproof apply to Representative Rangel. Furthermore, I believe that Representative Rangel would have settled this matter if he had been offered a letter of reproof, which is generally the appropriate sanction for conduct which is not criminal or corrupt.

Representative Rangel's conduct may have violated numerous House Rules and other applicable standards, but none of it demonstrated the malicious intent that led the *Hilliard* investigative subcommittee to believe a reprimand may be appropriate. Representative Rangel's admittedly careless conduct was not found to be and cannot be described as "systematic" or "deliberate." Representative Rangel's failure to comply with House Rules regarding solicitations on behalf of a charitable organization was based on his mistaken belief that raising money for a public university was consistent with his official duties. Representative Rangel's violations related to his taxes and Financial Disclosure statements were certainly negligent, but there was no conclusion that he intentionally filed inaccurate documents to conceal information. The investigative subcommittee did not consider or charge Representative Rangel with a violation of the False Statements Act. Representative Rangel's use of apartment 10U as a campaign office throughout his tenancy in the unit did not violate New York's rent-stabilization laws. The Statement of Alleged Violation does not allege that Representative Rangel violated any provision of the "impenetrable"<sup>37</sup> rent-stabilization code and he was paying the maximum rent allowable under the rent-stabilization code. Unlike Representative Hilliard, Representative Rangel did not violate House Rules and other applicable standards for personal financial gain, such as paying off personal and corporate debts.<sup>38</sup>

Representative Rangel also voluntarily complied with several requests for documents and testified before the investigative subcommittee. There is no allegation that Representative Rangel gave untruthful testimony in this matter or attempted to conceal information from the investigative subcommittee at any point. The factors that lead the Standards Committee to consider a sanction greater than a letter of reproof in the *Hilliard* matter are not present here. Representative Rangel did not and should not have to admit to each count of the excessive Statement of Alleged Violation, but like the *Hilliard* matter, was willing to "acknowledge that he violated House Rules and that he engaged in a pattern and practice of conduct that did not reflect creditably on the House of Representatives."<sup>39</sup> As such, a letter of reproof is the appropriate sanction.

In 1988, the Standards Committee issued a letter of reproof to Representative Charles G. Rose, III for conduct including his failure to report liabilities to his campaign and liabilities to

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<sup>37</sup> 89 *Christopher, Inc. v. Joy*, 318 N.E.2d 776, 780 (N.Y. 1974).

<sup>38</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative Earl F. Hilliard*, H. Rep. 107-130, 107<sup>th</sup> Cong., 1st Sess. at 4-6 (2001).

<sup>39</sup> *Id.* at 102.



financial institutions.<sup>40</sup> Representative Rose had borrowed funds from his campaign on eight occasions between 1978 and 1985, none of which were reported on the Financial Disclosure Statements.<sup>41</sup> The Standards Committee also found that Representative Rose failed to report six liabilities to financial institutions.<sup>42</sup> There was no indication that the liabilities to the financial institutions were problematic; rather, the mere non-disclosure was the issue.<sup>43</sup> Appropriate amendments which are timely submitted are given a presumption of good faith, while those amendments falling outside the scope of timely amendments receive no such presumption.<sup>44</sup> The Standards Committee noted that the Member had filed amendments, but those amendments were not timely under the Standards Committee's 1986 Pink Sheet, and did not prevent the Member from being sanctioned.<sup>45</sup>

The Standards Committee recommended that Representative Rose "be issued a formal and public letter of reproof from this Committee," noting the "mitigating circumstances which prevent these violations from rising to the level of a recommendation of sanction to the full House of Representatives."<sup>46</sup> These circumstances included his "admissions and corrective action" related to his financial disclosures.<sup>47</sup> Unlike the *Rose* matter, there is no evidence in the record here that Representative Rangel received any personal financial benefit from any of his alleged or admitted conduct. In addition, Representative Rangel took "corrective action"<sup>48</sup> to address his financial disclosure errors by hiring a forensic accountant and submitting amendments. Although Representative Rangel's financial disclosure statements contained numerous errors and omissions, the totality of the circumstances, including mitigating factors, indicate that a letter of reproof is appropriate.

The Standards Committee has also deemed a letter of reproof appropriate where a Member was found to have accepted personal gifts of a trip, had improper contact directly with a lobbyist, and allowed staff to work for his campaign "to the apparent detriment of the time they were required to spend in [his] congressional office."<sup>49</sup> In *In the Matter of Representative E.G. "Bud" Shuster*,<sup>50</sup> the Standards Committee found that Representative Shuster violated former House Rules XLIII and XLV by knowingly allowing a former employee-turned-lobbyist to

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<sup>40</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles G. Rose III*, H. Rep. 100-526, 100<sup>th</sup> Cong., 2d Sess. (1988).

<sup>41</sup> *Id.* at 25.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 20-22.

<sup>44</sup> "Policy Regarding Amendments to Financial Disclosure Statements" (Apr. 23, 1986), reprinted in the *2008 House Ethics Manual* at 379.

<sup>45</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles G. Rose III*, H. Rep. 100-526, 100<sup>th</sup> Cong., 2d Sess. at 22 (1988).

<sup>46</sup> *Id.* at 26.

<sup>47</sup> *Id.* at 22.

<sup>48</sup> *Id.*

<sup>49</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative E.G. "Bud" Shuster*, H. Rep. 106-979, 106<sup>th</sup> Cong., 2d Sess. at 3E (2000).

<sup>50</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative E.G. "Bud" Shuster*, H. Rep. 106-979, 106<sup>th</sup> Cong., 2d Sess. (2000).

communicate with or appear before him in the twelve months following her resignation, to influence Representative Shuster's schedule and to give him advice pertaining to his congressional office.<sup>51</sup> Representative Shuster also violated the House gift rule in connection with a trip to Puerto Rico with several members of his family by accepting reimbursement for trip expenses where the primary purpose of the trip was recreational.<sup>52</sup> Representative Shuster violated House rules by routinely using congressional staff for campaign purposes over the course of several years.<sup>53</sup> In addition to Representative Shuster's inadequate record-keeping practices, the number of and dollar amount expended for Representative Shuster's campaign related expenditures created an appearance that former House Rule XVI, Clause 6 was violated.<sup>54</sup>

The investigative subcommittee in the *Shuster* matter "determined that the violations to which Representative Shuster admitted could constitute the type of serious conduct meriting the imposition of a reprimand," based on several factors including "the duration of the conduct engaged in by Representative Shuster and the repetitive nature of the conduct."<sup>55</sup> However, the investigative subcommittee ultimately deemed a letter of reproof appropriate because Representative Shuster admitted to the charges and "acknowledged that his conduct did not reflect creditably on the House."<sup>56</sup> The Standards Committee adopted the investigative subcommittee's recommended sanction, issuing a public letter of reproof. The Standards Committee concluded "that the five separate areas of misconduct [Representative Shuster] admitted to in Statement of Alleged Violation constitute a significant violation of former Rule 43, Clause 1 of the House of Representatives."<sup>57</sup> Likewise, Representative Shuster's conduct resulted in various direct personal benefits to him and his family, including, accepting expenses from private companies associated with a family trip to Puerto Rico.<sup>58</sup> Representative Rangel did not receive any direct personal benefits related to any of his conduct in this matter.

The Standards Committee also noted that the misconduct that Representative Shuster "admitted to constituted misconduct which cannot be described accurately either as technical or *de minimis*."<sup>59</sup> Here, Representative Rangel's conduct in violation of congressional solicitation rules was not *de minimis*, but it could be described accurately as a "technical" violation of the rule. Members are allowed to solicit donations on behalf of 501(c)(3) organizations such as the City College of New York. Generally, the Standards Committee permits Members to make such requests "without the need to seek prior Committee approval."<sup>60</sup> Members can identify

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<sup>51</sup> *Id.* at 9-13, 19-31.

<sup>52</sup> *Id.* at 14-16.

<sup>53</sup> *Id.* at 51-64.

<sup>54</sup> *Id.* at 64-79.

<sup>55</sup> *Id.* at 113.

<sup>56</sup> *Id.* at 114.

<sup>57</sup> *Id.* at 3E.

<sup>58</sup> *Id.* at 6, 43.

<sup>59</sup> *Id.*

<sup>60</sup> 2008 *House Ethics Manual* at 348.

themselves as a Member of Congress or use their leadership title on any such solicitation,<sup>61</sup> Members can even solicit from the chief executive officers of companies with business before the House of Representatives as long as they follow the other rules outlined in the House Ethics Manual.<sup>62</sup>

Representative Rangel failed to adhere to some of the “restrictions” required for permissible solicitations, including that official resources may not be used and that such activity may not take place in facilities of the House of Representatives.<sup>63</sup> Representative Rangel admits that he failed to comply with these and other restrictions. This failure was based on his mistaken, but genuinely held belief that facilitating the building of the Rangel Center for Public Service at CCNY would benefit disadvantaged youth in his district, and was part of his official congressional duties. Because Representative Rangel’s solicitation on behalf of a public university would have been permissible had he followed the proper procedures identified in the 2008 House Ethics Manual, such conduct can reasonably be described as “technical.” The investigative subcommittee should have considered this fact in recommending an appropriate sanction for Representative Rangel’s conduct, as the full Committee did in the *Shuster* matter. The technical nature of Representative Rangel’s violation of the congressional solicitation rules suggests that a letter of reproof, rather than a reprimand, is the appropriate sanction, particularly since he received no personal benefit.

### 3. The Standards Committee should Consider the Numerous Mitigating Factors Present in this Matter in Recommending a Sanction

In the 100<sup>th</sup> Congress, the Standards Committee found that Representative Richard H. Stallings violated House Rules by improperly converting campaign funds to personal use in order to purchase a personal automobile and by authorizing his campaign to make loans to his administrative assistant.<sup>64</sup> The Standards Committee acknowledged that House Rules do not “specify the sanction to be imposed upon a finding that a Member failed to adhere to the Code of Official Conduct.”<sup>65</sup> However, the Standards Committee found that the mitigating factors involved in the *Stallings* case were sufficient enough that it was unnecessary to recommend that the House of Representatives render a sanction such as reprimand or censure. Instead, the Standard Committee concluded that “the better course is to formally and publicly reprove Representative Stallings for his violations.”<sup>66</sup> The Standards Committee should consider the various mitigating factors in this matter in determining the appropriate sanction for Representative Rangel’s conduct.

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<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 348-349.

<sup>63</sup> *Id.*

<sup>64</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative Richard H. Stallings*, H. Rep. 100-382, 100<sup>th</sup> Cong., 1st Sess. (1987).

<sup>65</sup> *Id.* at 4 (citing *Manual of Offenses and Procedures, Korean Influence Investigation*, June 1977 at 31).

<sup>66</sup> *Id.* at 6.

The most obvious of the mitigating factors here is that Representative Rangel has already voluntarily submitted to a sanction arising from this investigation by stepping down from his position as Chairman of the House Committee on Ways and Means on March 3, 2010. Revocation of congressional leadership positions is a significant sanction that has only been considered and actually implemented in the rarest occasions. Representative Adam Clayton Powell was excluded from the House of Representatives and his seniority was reduced after a finding that he used official resources for non-official travel.<sup>67</sup> There was also a “strong presumption” his wife did not perform services for which she was paid with congressional funds.<sup>68</sup> Representative William J. Jefferson was also forced to step down as a Member of the House Committee on Ways and Means because of allegations of corrupt conduct, but before the issuance of any indictment against him. It is significant that these are the only situations I am aware of where such a penalty has occurred without the issuance of an indictment or at least the commencement of a formal public criminal investigation against the subject Member.<sup>69</sup> Representative Rangel voluntarily relinquished his position with the House Committee on Ways and Means despite the fact that none of his alleged conduct in this matter or the conduct arising from the Standards Committee’s “Investigation into Officially Connected Travel of House Members to Attend the Carib News Foundation Multi-National Business Conferences in 2007 and 2008” involved an abuse of Representative Rangel’s official position for personal financial gain, bribery or any other corrupt conduct. It is also noteworthy that the investigative subcommittee did not find any criminal conduct for which Representative Rangel is likely to be indicted.

Even a Member that engaged in conduct more serious than Representative Rangel was able to maintain his leadership position. In 1980, an investigative subcommittee found that Representative Charles H. Wilson accepted money from a person with direct interest in legislation, kept an individual on his congressional payroll that was not performing duties commensurate with his or her pay, and converted campaign funds to personal use.<sup>70</sup> Representative Wilson accepted more than \$10,000 in “loans” that were deemed gifts from an individual who engaged in numerous direct communications with Representative Wilson about legislation introduced in the House just months later.<sup>71</sup> Although the Standards Committee recommended a sanction of censure and the denial of Representative Wilson’s committee chairmanship,<sup>72</sup> he was able to negotiate an amendment deleting the denial of his chairmanship from the sanction. Representative Wilson was censured by a voice vote. Representative Rangel agreed to step down as Chairman of the House Committee on Ways and Means based on

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<sup>67</sup> See H. Rep. 2349, 89th Cong., 2d Sess. (1966); H. Rep. 27, 90th Cong., 1st Sess. (1967).

<sup>68</sup> *Id.*

<sup>69</sup> Although Representative Jefferson was not a chairman, he was removed from the House Committee on Ways and Means, eviscerating any seniority he earned on the Committee, before an indictment was issued against him.

<sup>70</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson*, H. Rep. 96-930, 96th Cong., 2d Sess. (1980).

<sup>71</sup> *Id.* at 2.

<sup>72</sup> *Id.*

allegations and conduct that in no way involved personal financial gifts from individuals with interests before the House. This factor should mitigate any potential sanction that the Standards Committee considers levying against Representative Rangel.

The Standards Committee has heretofore identified several mitigating factors that it will consider in determining that a letter of reproof is an appropriate sanction for a Member's conduct in violation of House Rules and other applicable standards. In the *Stallings* matter, the Standards Committee first noted "there was no evidence of any improper intent on the part of Congressman Stallings either to conceal the subject transactions or to act in violation of the constraints imposed by [now, former] House Rule XLIII, clause 6 — the two loans were fully disclosed on the appropriate F.E.C. reports."<sup>73</sup> A second mitigating factor was that "the violations arose out of Representative Stallings' mistaken assumption that the loans were governed exclusively by the Federal Election Campaign Act."<sup>74</sup> Another mitigating factor considered in the *Stallings* matter was that as soon as Representative Stallings "became aware of his oversight of the controlling restriction under House Rules, [he] took corrective action on his own initiative."<sup>75</sup> Each of these mitigating factors is present in the matter involving Representative Rangel's conduct and points to a letter of reproof as the appropriate sanction. Subsequent Standards Committee reports confirm that mitigating factors should be considered when determining a sanction for violations of House Rules and other applicable rules.<sup>76</sup>

Despite the allegations that Representative Rangel committed numerous violations, there was no evidence of any improper intent on the part of Representative Rangel to conceal any of the subject conduct at any point during its commission or the investigative subcommittee's work. In fact, Representative Rangel himself wrote then Standards Committee Chair Stephanie Tubbs-Jones and then Acting Chair Gene Green requesting that the Committee "review" "[his] apartments in New York," "[his] efforts to assist City College of New York in establishing a Center for Public Service in my congressional district in Harlem," "issues relating to [his] investment in a guest unit at the Punta Cana Hotel in the Dominican Republic and errors that [he] may have inadvertently made in tax and House financial disclosure form filings."<sup>77</sup> Representative Rangel did not try to hide the fact that he was soliciting donations on behalf of CCNY for the Rangel Center; to the contrary, he secured an earmark for the project and defended his use of the earmark process for the Rangel Center on the House floor.<sup>78</sup> Likewise,

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<sup>73</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative Richard H. Stallings*, H. Rep. 100-382, 100<sup>th</sup> Cong., 1st Sess. at 5 (1987).

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> See House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles G. Rose, III*, H. Rep. 100-526, 100<sup>th</sup> Cong., 2d Sess. (1988); see also House Comm. on Standards of Official Conduct, *In the Matter of Representative Jim Bates*, H. Rep. 101-293, 101<sup>st</sup> Cong., 1st Sess. (1989).

<sup>77</sup> Letter from Representative Charles B. Rangel to Standards Committee Chair Representative Stephanie Tubbs-Jones, dated July 24, 2008; see also Letter from Representative Charles B. Rangel to Standards Committee Acting Chairman Representative Gene Green, dated September 9, 2008.

<sup>78</sup> 153 Cong. Rec. H8134 (daily ed. July 19, 2007).

Representative Rangel's use of apartment 10U in Lenox Terrace was open and notorious. The evidence in the record shows that apartment 10U remained vacant for several months prior Representative Rangel agreeing to enter a lease agreement for the unit.<sup>79</sup> Several Olnick employees who worked directly at the Lenox Terrace property testified that it was common knowledge among building residents and staff that Representative Rangel used apartment 10U as a campaign office.<sup>80</sup> Representative Rangel also made no attempt to hide or conceal his prior failures to submit accurate Financial Disclosure statements or tax documents. During the course of this investigation, Representative Rangel amended both his Financial Disclosure statements and his federal and state income taxes. He has already paid the maximum amount in back taxes. The record is clear that despite the breadth of Representative Rangel's numerous errors and omissions, he did not intend to conceal any information about his alleged conduct. This fact should mitigate any potential sanction the Standards Committee considers levying against Representative Rangel.

The record is also clear that Representative Rangel's violations were primarily the result of good faith misunderstandings about the law and other unintentional errors. Representative Rangel has consistently maintained that his solicitations on behalf of CCNY for the Rangel Center were based on his "mistaken assumption"<sup>81</sup> that assisting a public university in his congressional district to implement a program aimed at disadvantaged minority youth was part of his official duties as Congressman for the 15<sup>th</sup> congressional district of New York. The Rangel Center was created as part of Representative Rangel's legacy of public service and work to provide educational opportunities for minority youth.<sup>82</sup> Representative Rangel's assumption that his efforts on behalf of CCNY were part of his official duties was bolstered by the fact that Representative Rangel was able to secure an earmark of federal funds in support of CCNY's Rangel Center for Public Service. The Rangel Center earmark even overcame an amendment aimed at eradicating the disbursement of federal funds for the project because it was named for a sitting Member of Congress.<sup>83</sup> Floor speeches regarding this amendment disclosed that CCNY's Rangel Center would include a "well-furnished office" and an archivist/librarian, but it was still defeated by a significant margin.<sup>84</sup>

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<sup>79</sup> CSOC.CBR.00000004; CSOC.CBR.00000008.

<sup>80</sup> See e.g., Interview Transcript of Dion Keene (hereinafter Keene Int. Tr.) at 15; Interview Transcript of Darryl Rankin, May 14, 2009 (hereinafter Rankin Int. Tr. 5/14/09) at 56-7; Interview Transcript of Peter Soundias (hereinafter Soundias Int. Tr.) at 7.

<sup>81</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative Richard H. Stallings*, H. Rep. 100-382, 100<sup>th</sup> Cong., 1st Sess. at 5 (1987).

<sup>82</sup> See Letter from Representative Charles Rangel to Gregory Williams, dated December 7, 2004. CSOC.CBR.00002978- CSOC.CBR.00002979.

<sup>83</sup> 153 Cong. Rec. H8133-35; H8163-64 (daily ed. July 19, 2007).

<sup>84</sup> 153 Cong. Rec. H8133; H8163-64 (daily ed. July 19, 2007).

Members and employees of the House of Representatives are “prohibited from using official House resources for any *private* purpose.”<sup>85</sup> Despite this warning, the Manual further advises that Members normally have the authority to determine what is official; “[t]he decision whether to define an event as official (or not) generally lies within the discretion of the Member.”<sup>86</sup> Likewise, Representative Rangel’s decision that assisting a public university in his congressional district to establish a program to help minority students enter into public service was part of his official duties should be given some deference. The Standards Committee has acknowledged that “it is difficult to define comprehensively what is and is not official activity.”<sup>87</sup> The Committee also noted in its statement “Regarding Complaints Against Representative Newt Gingrich,” “[t]here may, of course, be some debate as to what ‘official’ congressional duties entail. Members may assume various public, political and official roles in connection with their position in Congress. It is ‘simply impossible’ to draw and enforce ‘a perfect line’ between official and related activities.”<sup>88</sup> The definition of official activities or duties is even more difficult to resolve where the Member’s conduct is in support of a *public* institution rather than a “*private* purpose,”<sup>89</sup> as described in the House Ethics Manual. Upon further review, the investigative subcommittee concluded that Representative Rangel’s solicitations of donations for the Rangel Center were not official and, as a result of that one conclusion, actions which would have been appropriate as official duties became violations, such as the use of official resources, the Frank, and public facilities. However, Representative Rangel’s charitable efforts on behalf of disadvantaged youth in his district should not be converted into corrupt conduct which warrants a reprimand. Even if Representative Rangel’s solicitations on behalf of CCNY’s Rangel Center cannot be considered part of his official duties, at the very least, his “mistaken assumption”<sup>90</sup> that it was official conduct should mitigate any sanction levied against him.

Representative Rangel also believed that his use of a rent-stabilized unit as a campaign office was not in violation of New York rent-stabilization laws; a review of the rent-stabilization code and significant testimony before the investigative subcommittee supports this conclusion.<sup>91</sup> New York rent stabilization laws give landlords the authority to determine how to address non-conforming uses of rent-stabilized units or violations of lease terms. Throughout his occupancy of apartment 10U, Representative Rangel openly and notoriously used the unit as a campaign

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<sup>85</sup> 2008 *House Ethics Manual* at 335 (citing 31 U.S.C. § 1301(a)) (emphasis added). The statute, 31 U.S.C. § 1301(a), which is cited in the Statement of Alleged Violation, requires that “appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.”

<sup>86</sup> 2008 *House Ethics Manual* at 335.

<sup>87</sup> *Statement of the Committee on Standards of Official Conduct Regarding Complaints Against Representative Newt Gingrich* at 58, 62 (Comm. Print Mar. 8, 1990).

<sup>88</sup> *Id.* at 41.

<sup>89</sup> 2008 *House Ethics Manual* at 335 (emphasis added).

<sup>90</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative Richard H. Stallings*, H. Rep. 100-382, 100<sup>th</sup> Cong., 1st Sess. at 5 (1987).

<sup>91</sup> See e.g., Interview Transcript of Neil Rubler, July 14, 2009 (hereinafter Rubler Int. Tr. 7/14/09) at 32-33; Rankin Int. Tr. 5/14/09 at 61.

office. Building staff and residents were aware of this use. Representative Rangel paid his rent for apartment 10U using checks from his campaign or the National Leadership PAC. The investigative subcommittee did not conclude that Representative Rangel's use of apartment 10U violated any laws; at worst Representative Rangel's conduct may be politically embarrassing. The fact is that Representative Rangel rented a long vacant apartment and paid the highest rent allowed under the rent-stabilization code. The investigative subcommittee failed to demonstrate how this private commercial transaction between Representative Rangel and his landlord could possibly result in a sanction reserved for corrupt and illegal conduct.

There is evidence in the record that Representative Rangel attempted to avoid violating House Rules and to correct his rules violations upon discovery. As previously noted, Representative Rangel himself requested that the Standards Committee begin an inquiry into his conduct related to the Rangel Center. Although Representative Rangel's conduct on behalf of CCNY violated congressional solicitation rules and other House Rules, the evidence indicates that Representative Rangel's staff and CCNY stopped sending out the Rangel Center brochure containing the request for donations and the language about a "well-furnished office" along with the letters.<sup>92</sup> Representative Rangel was careful to ensure that communications he and CCNY representatives made regarding the Rangel Center were separate from any discussions that he and his staff had about pending legislation with entities with interests before the House Committee on Ways and Means.<sup>93</sup> According to the notes of CCNY fundraiser Rachelle Butler, she spoke with Representative Rangel's District Director Jim Capel on March 9, 2007, who indicated that "AIG had gone down to DC to talk with [Capel] about legislation and Charlie wants to keep that completely separate from the Rangel Center."<sup>94</sup> Butler's notes also indicate that Capel said it was "ok" for Butler to ask AIG representatives for a meeting with CCNY officials, but because of AIG's contact with Representative Rangel's office about its legislative interests, "not one that includes Charlie, nor should [CCNY] send a letter there at this time."<sup>95</sup> Representative Rangel did not agree to meet with representatives of AIG about CCNY's Rangel Center until more than a year later, in April of 2008. Representative Rangel also attempted to correct the numerous errors and omissions in his tax returns and Financial Disclosure statements by hiring a forensic accountant, filing amended tax returns and filing amended Financial Disclosure statements for each of the calendar years 1998 through 2007. The Standards Committee should consider these attempts to avoid rules violations and other remedial actions as a mitigating factor in determining an appropriate sanction.

A letter of reproof is the appropriate sanction for Representative Rangel's conduct. Although the Standards Committee has traditionally recommended no sanction for "technical"

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<sup>92</sup> Interview Transcript of Rachelle Butler, November 14, 2008 (hereinafter Butler Int. Tr. 11/14/08) at 28.

<sup>93</sup> See e.g., CSOC.CBR.00024418.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*



Financial Disclosure violations,<sup>96</sup> Representative Rangel's violations of the procedures for permissible solicitations on behalf of a 501(c)(3) organization, coupled with repeated errors and omissions on his federal tax returns and Financial Disclosure statements, warrant a response from the Standards Committee. As evidenced by the *Shuster*, *Hilliard*, and *Stallings* matters, a letter of reproof is the appropriate response. The Standards Committee should consider the various mitigating factors that support a sanction of a public letter of reproof rather than a reprimand including Representative Rangel's intent, his "mistaken assumption" about what conduct constitutes his official duties, his attempts to take corrective action and the fact that he has already surrendered his leadership position on the House Committee on Ways and Means. Not only was Representative Rangel paying the maximum legal rent for apartment 10U, once Representative Rangel suspected that his tenancy in the unit *might* conflict with the purpose of the rent-stabilization laws, he sought clarification and initiated plans to move his office out of the building.<sup>97</sup> In a letter dated July 14, 2008 on "Rangel for Congress" letterhead, Walter Swett, Executive Director of Rangel for Congress, informed Darryl Rankin of Olnick that "Congressman Rangel has decided to relocate his fundraising office as soon as possible," allowing the lease to expire in October of 2008.<sup>98</sup> Based on these facts, the investigative subcommittee should have recommended a public letter of reproof issued by the Standards Committee, on behalf of the House of Representatives, rebuking Representative Rangel's conduct in violation of House Rules and other applicable standards. A letter of reproof is the appropriate sanction in this matter; a reprimand is not.

#### B. The Sanction of Reprimand is Inappropriate

Since the establishment of the Standards Committee, the House of Representatives has only reprimanded a Member nine times. In two other cases, the House rejected the Standards Committee's recommendation of reprimand and voted to censure Members. Based on the prior precedents of the House of Representatives and the Standards Committee, a reprimand is an inappropriate sanction here. A reprimand is a more severe measure than has been taken in prior matters where Members were found to have engaged in similar conduct to Representative Rangel. A letter of reproof is the appropriate sanction for Representative Rangel's conduct, which includes failures to follow Standards Committee instructions related to solicitations on behalf of a public university located in his congressional district, failure to adequately review financial records, which led to omitting required information on Representative Rangel's Financial Disclosure Statements and under reporting income on his federal tax returns in numerous years.

Generally, the Standards Committee and House of Representatives have found that a Member's conduct in violation of House Rules and other applicable standards warrants a

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<sup>96</sup> See House Comm. on Standards of Official Conduct, *In the Matter of Representative Geraldine A. Ferraro*, H. Rep. 98-1169, 98th Cong., 2d Sess. (1984).

<sup>97</sup> CSOC.CBR.00000581.

<sup>98</sup> *Id.*

reprimand only where the conduct involves serious criminal activity, the indication of corruption or a significant abuse of power.<sup>99</sup> The Standards Committee has recommended a reprimand of Members who failed to disclose gifts or donations under circumstances that suggested a specific intent to conceal information, an actual conflict of interest, or if items of significant value were received from an individual already under investigation by the Committee because of concerns about corruption.<sup>100</sup> The Standards Committee has also recommended reprimand of a Member who committed numerous violations after receiving direct guidance that such conduct may violate the law and then submitted false information to the Standards Committee during the investigation into these violations.<sup>101</sup>

By contrast, Representative Rangel's violations were largely based on carelessness and ignorance of the applicable standards. Representative Rangel's violations of the solicitation statute and related rules were based on his sincere, albeit mistaken, belief that facilitating the creation of the City College of New York's Rangel Center was official business on behalf of a public institution of higher learning located in his District and on behalf of the numerous constituents in his district who would benefit from the Center's existence. Representative Rangel's violations of the Ethics in Government Act and the Internal Revenue Code were largely based on his failure to adequately review financial records and tax documents that were prepared for him. Representative Rangel's conduct does not rise to the level of corruption, an abuse of power, use of official position for personal financial benefit or ignorance of clearly articulated standards that warrant a reprimand by the House. Representative Rangel cooperated with the investigative subcommittee and did not submit false statements during the course of this investigation that caused additional delays and costs to the House.<sup>102</sup> The Standards Committee should conclude that a public letter of reproof is a sufficient and appropriate sanction.

#### 1. Reprimand Cases Involving Incomplete or Inaccurate Financial Disclosure Statements

The Standards Committee has recommended the sanction of reprimand in matters where a Member has failed to submit accurate Financial Disclosure statements. However, unlike Representative Rangel's conduct, these cases also involved allegations of a corrupt conflict of

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<sup>99</sup> See e.g., House Comm. on Standards of Official Conduct, *In the Matter of Representative George V. Hansen*, H. Rep. 98-891, 98th Cong., 2d Sess. at 390 (1984); see also House Comm. on Standards of Official Conduct, *In the Matter of Representative Barney Frank*, H. Rep. 101-610, 101<sup>st</sup> Cong., 2d Sess. at 3-4 (1990); House Comm. on Standards of Official Conduct, *In the Matter of Representative Gerry E. Studds*, H. Rep. 98-295, 98th Cong., 1st Sess. at 1 (1983).

<sup>100</sup> See e.g., House Comm. on Standards of Official Conduct, *In the Matter of Representative George V. Hansen*, H. Rep. 98-891, 98th Cong., 2d Sess. at 390 (1984); see also House Comm. on Standards of Official Conduct, *In the Matter of Representative Robert L.F. Sikes*, H. Rep. 94-1364, 94<sup>th</sup> Cong., 2d Sess. at 4 (1976); House Comm. on Standards of Official Conduct, *In the Matter of Representative Edward R. Roybal*, H. Rep. 95-1743, 95th Cong., 2d Sess. at 1 (1978).

<sup>101</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative Newt Gingrich*, H. Rep. 105-1, 105<sup>th</sup> Cong., 1st Sess. at 1 (1997).

<sup>102</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative Newt Gingrich*, H. Rep. 105-1, 105<sup>th</sup> Cong., 1st Sess. at 1 (1997).

interest or the specific intent to conceal information suggesting corruption. A reprimand is appropriate for “serious violations” based on the “character of the offenses.”<sup>103</sup> The Standards Committee has found that the “character” of conduct related to financial disclosure statements warranting a reprimand included those instances where the omission is connected to some other impropriety such as a Member possessing a direct financial interest in legislation he or she has introduced. Here, Representative Rangel admits that he did not exercise sufficient care in reviewing and submitting his financial disclosure statements. These violations were careless, but did not conceal the existence of a financial interest in any legislation and were not purposeful attempts to hide information. Based on these facts, a reprimand is not appropriate.

*a. In the Matter of Representative George V. Hansen*

Representative George V. Hansen was reprimanded by the Standards Committee after he was found guilty of violating the Ethics in Government Act and the False Statements Act for failing to disclose four separate transactions on his financial disclosure statements totaling \$322,000, including a loan from Nelson Bunker Hunt, an individual the Committee found to have numerous interests before the House because of his considerable wealth.<sup>104</sup>

The Standards Committee noted that the sanction of reprimand was appropriate against Representative Hansen because the matter involved “the receipt of loans and interest payments by Congressman Hansen from persons he was assisting before federal departments” which violated various House Rules.<sup>105</sup> Representative Hansen also committed violations of Standards Committee guidance regarding solicitations and with his wife, “transferred solicited funds to a joint account from which monies were drawn by Congressman Hansen for his personal use.”<sup>106</sup> The Standards Committee noted that all of the laws and House Rules that Representative Hansen violated “were disclosure-related.”<sup>107</sup> Specifically, the Standards Committee considered that “Special Counsel found that it was to avoid explaining his relationship with Nelson Bunker Hunt and the Virginia men that Congressman Hansen failed to list various transactions.”<sup>108</sup> The Standards Committee considered recommending the sanction of censure, but found that prior precedent was more consistent with a reprimand.<sup>109</sup>

Representative Hansen received a reprimand after being convicted under the False Statements Act. In order to prove a violation of this statute, the government must show that the defendant either knew the relevant statements were false or that the defendant acted with a

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<sup>103</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative George V. Hansen*, H. Rep. 98-891, 98th Cong., 2d Sess. at 390 (1984).

<sup>104</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative George V. Hansen*, H. Rep. 98-891, 98th Cong., 2d Sess. at 3 (1984).

<sup>105</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative George V. Hansen*, H. Rep. 98-891, 98th Cong., 2d Sess. 388 (1984).

<sup>106</sup> *Id.* at 390.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

“conscious purpose” to avoid learning the truth of the statements.<sup>110</sup> The investigative subcommittee did not find that Representative Rangel violated the False Statements Act. Representative Rangel admits that his Financial Disclosure statements contained numerous errors and omissions, including failure to disclose income derived from the Punta Cana investment which involved complex calculations of imputed rental income, cancellation of debt income and other non-cash, technical forms of income. Despite this admission, there are no facts in the record indicating that Representative Rangel acted with a “conscious purpose” to avoid publicity of the truth of the statements. The Statement of Alleged Violation acknowledges that Representative Rangel’s Financial Disclosure statements were prepared by members of his congressional staff and that he failed to ensure that the information reported on the Financial Disclosure Statements was accurate or complete. Such conduct does not constitute a violation of the False Statements Act. Although Representative Rangel’s financial disclosure statements included numerous errors and omissions, these mistakes were due to carelessness and a failure to take appropriate efforts to ensure their accuracy. There is no evidence that Representative Rangel engaged in any knowing or willful attempt to conceal information from the Internal Revenue Service, the Standards Committee or the public. As such, a letter of reproof, rather than a reprimand is the appropriate sanction.

*b. In the Matter of A Complaint Against Representative Robert L.F. Sikes*

The Standards Committee has also recommended the sanction of reprimand where a Member failed to disclose financial information despite apparent “conflicts of interests and the use of an official position for any personal benefit.”<sup>111</sup> The Standards Committee concluded that Representative Sikes committed numerous violations of House Rules, including:

- (1) The failure to report the ownership of stock in Fairchild Industries, Inc. for the years 1968 through 1973 and the First Navy Bank for the year 1974, as required by House Rule XLIV.
- (2) The purchase of [2,500 shares of] stock in the First Navy Bank during the period of its organization and following active efforts in his official capacity to obtain a charter and federal insurance of deposits.
- (3) The sponsorship of legislation in 1961 to remove restrictions on land without disclosing to the Congress the fact he had a beneficial interest in the land affected by the legislation.<sup>112</sup>

The Standards Committee found that Representative Sikes’ failures to disclose ownership of stock were not made in bad faith or “motivated by an effort to conceal the financial holding from

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<sup>110</sup> See e.g., *U.S. v. Dick*, 744 F.2d 546 (7th Cir. 1984); see also, *U. S. v. West*, 666 F.2d 16 (2d. Cir. 1981).

<sup>111</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative Robert L.F. Sikes*, H. Rep. 94-1364, 94<sup>th</sup> Cong., 2d Sess. at 4 (1976).

<sup>112</sup> *Id.*

the Members of the House or the public.”<sup>113</sup> However, the Committee found that the failure to report as required by former Rule XLIV is “deserving of a reprimand.”<sup>114</sup> In addition, the Standards Committee deemed the sanction of reprimand appropriate because Representative Sikes violated clause 5 of the Code of Ethics for Government Service by “approaching organizers of the [First Navy] Bank, inquiring about the possibility of buying stock in the Bank, and then purchasing 2,500 shares of the Bank’s privately held stock following the active and continuing involvement on his part as shown by the record before the Committee in establishing the Bank.”<sup>115</sup>

Finally, the Standards Committee noted “the action of Representative Sikes in sponsoring legislation in 1961 [impacting his property interest on Santa Rosa Island] which created an obvious and significant conflict of interest.”<sup>116</sup> The primary goal of the legislation “was to remove a reversionary interest and restrictions on property which were inhibiting its commercial development, and Representative Sikes failed to disclose his substantial interest in the affected property.”<sup>117</sup> The Standards Committee “declined to make a recommendation of formal punishment on this issue because it occurred fifteen years prior to the Committee’s report, some of the facts were known to Representative Sikes’ constituents and he had been subsequently reelected.”<sup>118</sup>

The purpose of Financial Disclosure statements is to identify conflicts of interests. The Standards Committee has found reprimand to be an appropriate sanction where a Member has failed to disclose information *and* conflicts of interests or other potential impropriety suggesting corruption is involved. Under federal law and regulations, the term “conflict of interest” “is limited in meaning; it denotes a situation in which an official’s conduct of his office conflicts with his private economic affairs.”<sup>119</sup> Representative Rangel was admittedly careless in reviewing and submitting his Financial Disclosure statements over the course of numerous years, but the investigative subcommittee did not find any evidence that Representative Rangel’s errors and omissions were intended to or did in fact conceal a conflict of interest or the use of an official position for any personal financial benefit. The 2008 *House Ethics Manual* describes the *Sikes* matter as a case where “[t]he House reprimanded [Sikes] based on charges concerning his use of his official position for pecuniary gain and receipt of benefits under circumstances that might have been construed as influencing official duties. There the Member took official actions that enhanced the value of his personal financial holdings.”<sup>120</sup> Sikes violated the prohibition on the use of one’s official position for personal gain by seeking “benefits from an organization

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<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.* at 21.

<sup>116</sup> *Id.* at 4.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.* at 5.

<sup>119</sup> 2008 *House Ethics Manual* at 187 (citing Robert S. Getz, *Congressional Ethics* 3 (1967)); see also Bayless Manning, *Federal Conflict of Interest Laws* 2-5 (1964); *Black’s Law Dictionary* 319 (8th ed. 2004).

<sup>120</sup> 2008 *House Ethics Manual* at 20.

after he had actively promoted the establishment of that organization in his official capacity.”<sup>121</sup> Here, the investigative subcommittee was not presented with any evidence that “denotes a situation in which [Representative Rangel’s] conduct of his office conflicts with his private economic affairs.”<sup>122</sup> As such, a letter of reproof, rather than a reprimand, is the appropriate sanction for Representative Rangel’s conduct.

## 2. Reprimand Cases Involving Other Failures to Report Accurate Information

Although Members have received a reprimand from the House in matters where the Member has failed to make other disclosures required by law, or made inaccurate statements to the Standards Committee or other government agency, those instances have involved concerns about government corruption that are not present here. Representatives Edward Roybal, John J. McFall, and Charles H. Wilson were each reprimanded for failing to disclose gifts on their financial disclosure statements or making false statements about the gifts they received. Those gifts were provided to Representatives Sikes, Roybal and Wilson from Tongsun Park, an individual who was a subject of the Standards Committee’s *Korean Influence Investigation*.<sup>123</sup> Park, a struggling businessman, devised a scheme to become a conduit for providing Members of Congress with money and other gifts to influence their policies towards the Republic of Korea (ROK) Government.<sup>124</sup>

### a. *Korean Influence Investigation*

In furtherance of the Standards Committee’s *Korean Influence Investigation*, the Committee sent a questionnaire to each individual who had served as a Member of the House of Representatives during the relevant period of the investigation.<sup>125</sup> The questionnaire asked about Members’ contacts with Park and other individuals relevant to the investigation including “innocuous contacts such as attendance at parties hosted by the named individuals and travel to Korea, as well as gifts of substantial value,”<sup>126</sup> defined as anything in excess of \$100.<sup>127</sup> Members and former Members were advised that “the purpose of the questionnaire was not only to learn of any improper activities, but to determine the extent of Korean lobbying activities, including legal activities.”<sup>128</sup>

At the conclusion of its investigation, the Standards Committee found:

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<sup>121</sup> *Id.* at 249.

<sup>122</sup> *Id.* at 187; *supra* note 118.

<sup>123</sup> House Comm. on Standards of Official Conduct, *Korean Influence Investigation*, H. Rep. 95-1817, 95th Cong., 2d Sess. at 9 (1978).

<sup>124</sup> *Id.* at 9-10.

<sup>125</sup> *Id.* at 2.

<sup>126</sup> *Id.* at 3.

<sup>127</sup> *Id.* at 177.

<sup>128</sup> *Id.* at 3.

Park proposed a plan to the ROK Government under which the ROK Government would force U.S. rice sellers to name Park as their agent in connection with rice purchases by the ROK; under which Park would then earn very large commissions on such purchases (in fact amounting to over \$9 million during the period 1969-75); and under which he would give part of the proceeds to Members of Congress so that they would become supporters of Korea on important issues such as military and economic aid. ... Although Park to some degree made efforts to influence Congress on legislation affecting the ROK and undoubtedly made some payments in part for that purpose, it appears that he was far more interested in paying Congressman who would help him maintain his status as a rice agent rather than help the ROK on legislative issues affecting it.<sup>129</sup>

Several Members were found to have violated House Rules as a result of their contacts with Park and/or their failure to accurately report any such contacts. Park testified that he also made contributions to several former Members and candidates. The Standards Committee found that the former Members and candidates were "beyond the jurisdiction of the House" to adjudicate and sanction.<sup>130</sup>

b. Representative Edward R. Roybal

In a separate report, the Standards Committee found by clear and convincing evidence that Representative Roybal "failed to report a \$1,000 cash contribution he received from Tongsun Park on or about August 22, 1974," converted Park's contribution to his own personal use, and "gave 'testimony which he did not believe to be true', when he denied under oath that he received the contribution."<sup>131</sup> The Standards Committee recommended censuring Representative Roybal, but the House voted to reprimand him.<sup>132</sup>

c. Representative John J. McFall

The Standards Committee investigated allegations that Representative McFall failed to disclose a \$3,000 campaign contribution from Park to the Clerk of the House.<sup>133</sup> On these facts, the Standards Committee found by clear and convincing evidence that Representative McFall conducted "himself in a manner which did not reflect creditably on the House of Representatives and with violating Federal election laws by failing to report \$3,000 received in October 1974, as

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<sup>129</sup> *Id.* at 10.

<sup>130</sup> *Id.* at 59.

<sup>131</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative Edward R. Roybal*, H. Rep. 95-1743, 95th Cong., 2d Sess. at 1 (1978).

<sup>132</sup> House Comm. on Standards of Official Conduct, *Korean Influence Investigation*, H. Rep. 95-1817, 95th Cong., 2d Sess. at 58 (1978).

<sup>133</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. 95-1742, 95th Cong., 2d Sess. at 9 (1978).

a campaign contribution from Tongsun Park.”<sup>134</sup> Although Representative McFall was exonerated of charges that he converted Park’s contribution to his personal use and that he accepted gifts and favors from Park including cash and a tea set “under circumstances which might be construed by reasonable persons as influencing the performance of his Government duties,” the Standards Committee recommended that he receive a formal reprimand from the House.<sup>135</sup> Representative McFall was reprimanded by voice vote on October 13, 1978.

d. Representative Charles H. Wilson

Representative Wilson was reprimanded by the House after the Standards Committee found that he “falsely den[ie]d that he received a \$1,000 cash wedding present from Park.”<sup>136</sup> In response to the Standards Committee’s questionnaire regarding the *Korean Influence Investigation*, Representative Wilson “stated that he had not received anything of a value greater than \$100 from Mr. Tongsun Park.”<sup>137</sup> In reality, Representative Wilson had received U.S. and foreign currency from Park valued at approximately \$1,000. Based on these facts, the Standards Committee found that “Representative Wilson had made ‘a false statement in writing’ when in his July 28, 1977, response to the committee’s questionnaire he denied receiving anything of a value greater than \$100 from Tongsun Park and that Representative Wilson ‘then and there knew that’ that statement was false.”<sup>138</sup> Although the Standards Committee recommended a sanction of censure,<sup>139</sup> the House rejected that recommendation and voted to reprimand Representative Wilson.

These cases involve facts that are highly distinguishable from the conduct engaged in by Representative Rangel here. There are no facts in the record that Representative Rangel attempted to conceal his solicitations on behalf of CCNY or the donors to CCNY for the Rangel Center or that he consciously and knowingly made false statements about his income, transactions or any other disclosable asset. To the contrary, Representative Rangel announced on the floor of the House of Representatives that through his efforts on behalf of CCNY,

We have corporat[e] people making contributions. The school does not exist. It will be announced in October. And I hope my Federal Government is a part of that, as I know my city and State are going to be a part of it, not because my name is on it. I would feel just as strongly about this if it wasn’t.<sup>140</sup>

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<sup>134</sup> *Id.* at 1.

<sup>135</sup> *Id.* at 3.

<sup>136</sup> House Comm. on Standards of Official Conduct, *Korean Influence Investigation*, H. Rep. 95-1817, 95th Cong., 2d Sess. at 58 (1978).

<sup>137</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson of California*, H. Rep. 95-1741, 95th Cong., 2d Sess. at 1 (1978).

<sup>138</sup> *Id.*

<sup>139</sup> *Id.* at 12.

<sup>140</sup> 153 Cong. Rec. H8134 (daily ed. July 19, 2007).



Representative Rangel also admitted that, as characterized in the Statement of Alleged Violation, he personally signed each of his Financial Disclosure statements which contained numerous errors and omissions. Representative Rangel expressed remorse before the Committee testifying, "I have learned my lesson and I overly relied on people for taking care of my personal things as I dedicated myself 7 days a week to my job."<sup>141</sup> Unlike prior cases that warranted a reprimand, Representative Rangel's underlying conduct did not involve intentionally concealing information, nor did he try to do so during the course of this investigation.

### 3. Other Reprimand Cases

A Member has received the sanction of reprimand in several other cases, but none of the facts involved in these matters are sufficiently similar to Representative Rangel's conduct to warrant the sanction of reprimand.

#### a. Representative Gerry E. Studds and Representative Daniel Crane

In the 98<sup>th</sup> Congress, the Standards Committee recommended that the House reprimand two Members as result of their "improper or illegal sexual conduct" with House pages.<sup>142</sup> The Standards Committee found that Representative Studds engaged in a sexual relationship with a 17-year old male House page and made sexual advances to two other pages 10 years earlier in 1973.<sup>143</sup> The Standards Committee also found that Representative Crane had a sexual relationship with a 17-year old female House page in 1980.<sup>144</sup> The Standards Committee noted that a "sexual relationship between a Member of the House of Representatives and a congressional page, or any sexual advance by a Member to a page represents a serious breach of the duty owed by the House and its individual Members to the young people who serve the House as pages."<sup>145</sup> The House of Representatives rejected the Standards Committee's recommendation of reprimand and voted to censure both Members by a vote of 421-3.

#### b. Representative Austin J. Murphy

The House of Representatives voted to reprimand Representative Murphy based on the Standards Committee's finding that he violated several House Rules by failing "to take steps necessary to prevent unauthorized use of his voting card or to disavow the votes that were cast in his name" among other conduct.<sup>146</sup> The Standards Committee also found that over a nine-year

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<sup>141</sup> Rangel Int. Tr. at 164.

<sup>142</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative Gerry E. Studds*, H. Rep. 98-295, 98th Cong., 1st Sess. at 1 (1983).

<sup>143</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative Gerry E. Studds*, H. Rep. 98-295, 98th Cong., 1st Sess. at 1 (1983).

<sup>144</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative Daniel Crane*, H. Rep. 98-296, 98th Cong., 1st Sess. at 1 (1983).

<sup>145</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative Gerry E. Studds*, H. Rep. 98-295, 98th Cong., 1st Sess. at 1 (1983).

<sup>146</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative Austin J. Murphy*, H. Rep. 100-485, 100<sup>th</sup> Cong., 1st Sess. at 3 (1987).

period Representative Murphy “permitted official resources to be diverted from his district office in Charleroi, Pennsylvania, to the law firm of Murphy & France for the private business of the law firm,” in violation of 31 U.S.C § 1301(a) requiring appropriations to be applied only to the objects for which the appropriations were made, and clause 5 of the Code of Ethics for Government Service.<sup>147</sup> Representative Murphy was a former partner in the law firm.<sup>148</sup> Representative Murphy also employed a staffer, Michael Corbett, “notwithstanding the fact that Mr. Corbett did not perform duties commensurate with the compensation he received,” in violation of House rules.<sup>149</sup> Although Representative Murphy did not receive a financial benefit, his former law firm received a substantial financial benefit, saving \$20,000 in photocopying charges, and more than \$30,000 because Representative Murphy allowed a receptionist on his congressional staff to serve in the same capacity for the law firm.<sup>150</sup>

### c. Representative Barney Frank

The Standards Committee recommended a reprimand of Representative Frank after finding that he violated House Rules by preparing a memo which contained false statements to the Commonwealth Attorney in Alexandria responsible for his associate’s probation in a criminal matter.<sup>151</sup> The memorandum stated that his associate was “scrupulous about meeting his probation requirements,” even though at the time, Representative Frank knew his associate was engaging in prostitution while on probation, and thus not abiding by the probation requirement that he obey all laws.<sup>152</sup> The Standards Committee noted that the memorandum Representative Frank “reasonably should have anticipated ... might be communicated to all enforcement officials” contained “misleading statements [which] could be perceived as an attempt to use political influence to affect the administration of [his associate’s] probation.”<sup>153</sup> Representative Frank also accepted administrative dismissal of 33 parking tickets that he and the associate incurred that were not connected to official business.<sup>154</sup> Between 1985 and 1987, 67 tickets were assessed to Representative Frank’s car for non-moving violations.<sup>155</sup> Forty-four of the tickets were dismissed without Representative Frank’s knowledge or request.<sup>156</sup> The Standards Committee found that although Representative Frank did not actively seek dismissal of the tickets, he did receive a financial benefit due to having the fines waived.<sup>157</sup> Representative Frank was directed to make full restitution to the District of Columbia government for the amount of

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<sup>147</sup> *Id.* at 4.

<sup>148</sup> *Id.* at 86.

<sup>149</sup> *Id.* at 5.

<sup>150</sup> *Id.* at 87.

<sup>151</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative Barney Frank*, H. Rep. 101-610, 101<sup>st</sup> Cong., 2d Sess. at 3-4 (1990).

<sup>152</sup> *Id.* at 25-26.

<sup>153</sup> *Id.* at 56.

<sup>154</sup> *Id.* at 32-33.

<sup>155</sup> *Id.*

<sup>156</sup> *Id.* at 33.

<sup>157</sup> *Id.* at 55.

the 33 tickets waived.<sup>158</sup> The Standards Committee dismissed allegations that Representative Frank allowed the use of his personal residence for prostitution and engaged in sexual activity in the House gymnasium.<sup>159</sup>

d. Representative Newt Gingrich

During the 105<sup>th</sup> Congress, the Standards Committee recommended a reprimand of Representative Newt Gingrich for a number of violations which included the use of official resources in support of programs and courses with the American Opportunities Workshop and Renewing American Civilization that were not in accordance with those organizations' status under IRC § 501(c)(3).<sup>160</sup> The Standards Committee found that Representative Gingrich "engaged in activity involving 501(c)(3) organizations that was substantially motivated by partisan, political goals."<sup>161</sup> The Standards Committee further noted that while the American Opportunities Workshop program "was educational, the citizens' movement was also considered a tool to recruit non-voters and people who were apolitical to the Republican Party."<sup>162</sup> Likewise, Representative Gingrich "intended that a 'Republican majority' would be the heart of the [Renewing American Civilization] movement and that the movement would 'professionalize' House Republicans."<sup>163</sup>

In determining what the appropriate sanction should be, the *Gingrich* Investigative "Subcommittee and Special Counsel considered the seriousness of the conduct, the level of care exercised by Mr. Gingrich, the disruption caused to the House by the conduct, the cost to the House in having to pay for an extensive investigation and the repetitive nature of the conduct."<sup>164</sup> Representative Gingrich was held accountable for the Standards Committee's "extensive" investigation because "[w]hen the Committee specifically focused Mr. Gingrich's attention on that issue and questions concerning GOPAC's involvement in the course, his response was not accurate."<sup>165</sup> Although Representative Gingrich "did not intend to mislead the Committee and apologized for his conduct," his "inaccurate statements" prevented the matter from being "resolved as expeditiously as it could have been."<sup>166</sup> This delay "caused a controversy over the matter to arise and last for a substantial period of time, it disrupted the operations of the House, and it cost the House a substantial amount of money in order to determine the facts."<sup>167</sup> Among the other factors leading the *Gingrich* investigative subcommittee to recommend a reprimand was that "the violation [did] not represent only a single instance of reckless conduct. Rather, over

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<sup>158</sup> *Id.*

<sup>159</sup> *Id.* at 4.

<sup>160</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative Newt Gingrich*, H. Rep. 105-1, 105<sup>th</sup> Cong., 1st Sess. at 1 (1997).

<sup>161</sup> *Id.* at 4.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.* at 5.

<sup>164</sup> *Id.* at 94.

<sup>165</sup> *Id.* at 91.

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

a number of years and in a number of situations, Mr. Gingrich showed a disregard and lack of respect for the standards of conduct that applied to his activities.”<sup>168</sup> Although the record is clear that Representative Rangel violated House Rules over the course of several years, there are numerous distinguishing factors between the facts in the *Gingrich* matter and the conduct engaged in by Representative Rangel.

The Standards Committee concluded that Representative Gingrich’s conduct warranted a reprimand because “there were significant and substantial warning signals to Mr. Gingrich that he should have heeded prior to embarking on these projects. Despite these warnings, Mr. Gingrich did not seek any legal advice to ensure his conduct conformed with the provisions of 501(c)(3).”<sup>169</sup> The Standards Committee found that:

Prior to embarking on these projects, Mr. Gingrich had been involved with another organization that had direct experience with private benefit prohibition in a political context, the American Campaign Academy. In a 1989 Tax Court opinion issued less than a year before Mr. Gingrich set the AOW/ACTV project into motion, the Academy was denied its exemption under 501(c)(3) because, although educational, it conferred an impermissible private benefit on Republican candidates and entities. ... Taking into account Mr. Gingrich’s background, experience, and sophistication with respect to tax-exempt organizations, and his status as a Member of Congress obligated to maintain high ethical standards, the Subcommittee concluded that Mr. Gingrich should have known to seek appropriate legal advice to ensure that his conduct in regard to the AOW/ACTV and Renewing American Civilization projects was in compliance with 501(c)(3).<sup>170</sup>

Representative Rangel did not have any such warning. Reprimand was recommended in the *Gingrich* matter because Representative Gingrich received a clear directive less than a year prior to his involvement with AOW/ACTV and Renewing American Civilization that the organizations could not provide private benefits to political parties, but did not seek any additional advice or attempt to mitigate the conduct. Furthermore, during the investigation, Representative Gingrich made “inaccurate” statements to the Committee.<sup>171</sup>

Although the House Ethics Manual advises that Members must meet certain requirements if they plan to fundraise on behalf of a 501(c)(3), Representative Rangel has stated on numerous occasions that he believed his efforts on behalf of the City College of New York to be a part of his official congressional duties. Representative Rangel has assisted the public university in

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<sup>168</sup> *Id.* at 94.

<sup>169</sup> *Id.* at 92.

<sup>170</sup> *Id.* at 8.

<sup>171</sup> *Id.* at 91.

numerous capacities throughout his tenure as the Member of Congress representing the 15<sup>th</sup> congressional district of New York. CCNY's Rangel Center was not just a 501(c)(3) organization; it was a project run by a public university in Representative Rangel's district, serving disadvantaged minority youth who also resided in Representative Rangel's district. Representative Rangel testified:

I considered it an official part of my responsibility, and I didn't see where I was soliciting for anything except helping a public institution that had over a hundred years of history of educating poor folks. I probably put out a press release at government expense. I was so proud of the fact that I was involved in expanding the services that were rendered by the City College. This is a public college. They were public, I was public. I considered it a public effort I was making.<sup>172</sup>

Unlike Representative Gingrich, Representative Rangel did not have any specific guidance from the Standards Committee or any other body that his work on behalf of a public university such as CCNY was not a part of his official duties prior to engaging in the offending conduct. Representative Rangel erroneously believed that his solicitation of donations on behalf of CCNY was an official function, but he had no direct guidance to undermine this conclusion. Neither the 1992 nor the 2008 editions of House Ethics Manual provides any definition of "official conduct" or "official duties" which specifically address Representative Rangel's understanding regarding soliciting on behalf of public universities such as CCNY.

Another distinguishing factor between the *Gingrich* matter and Representative Rangel's conduct are Representative Rangel's attempts to comply with House Rules or mitigate the severity of his violations. Representative Rangel did not submit "inaccurate statements" which resulted in a delay of the investigative subcommittee's work or disrupt the operations of the House.<sup>173</sup> Instead, he attempted to identify and remedy his conduct that violated House Rules. Representative Rangel asked the Standards Committee to investigate his conduct. The Standards Committee should also consider that Representative Rangel hired a forensic accountant and filed amended Financial Disclosure statements for each of calendar years 1998 through 2007 on August 12, 2009. These corrective measures set Representative Rangel further apart from Members who have received a sanction of reprimand.

Representative Rangel's conduct also does not demonstrate the willful "ignorance of or disregard for House Rules and various legal standards applicable to the conduct of Members' official duties" noted in the *Gingrich* matter.<sup>174</sup> The record demonstrates that Representative Rangel attempted, albeit ineffectively, to ensure that the letters he sent to potential donors to

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<sup>172</sup> Rangel Int. Tr. at 20-21.

<sup>173</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative Newt Gingrich*, H. Rep. 105-1, 105<sup>th</sup> Cong., 1st Sess. at 91 (1997).

<sup>174</sup> *Id.* at 94.

CCNY for the Rangel Center were not solicitations for donations. The letters did not request money, but merely “advice and assistance concerning how to approach the donor community, particularly private and corporate foundations interested in education” as well as “a dialogue with you on funding of the Rangel Center.”<sup>175</sup> Representative Rangel testified:

I went out of my way to make certain that I didn’t solicit on official stationery. I think all of the letters, you’ll see that I never asked anyone for money, even though it was my hope that the foundations will take interest in this educational project, which is as important today as it ever has been in the past, and that CCNY would have to sell this project, because it would be self serving for me to say, Support Rangel.<sup>176</sup>

Although some of the letters were accompanied by a brochure requesting the recipient to “consider a gift of \$30,000,000 or \$6,000,000/year over five years,” CCNY ceased using the brochure midway through its fundraising process.<sup>177</sup>

While reasonable persons could certainly conclude that the combination of Representative Rangel’s form letter and CCNY’s Rangel Center brochure comprised a solicitation, it is also noteworthy that neither the House Ethics Manual nor 5 U.S.C. § 7353 defines the term “solicit” or what conduct constitutes a “solicitation.” Furthermore, Representative Rangel had previously received guidance from the Standards Committee that it was permissible to use official House Resources to forward to other Members a request for donations to a private individual’s educational fund. The Committee advised Representative Rangel that pursuant to 31 U.S.C § 1301:

The solicitation of funds for this educational fund by use of government resources, such as congressional stationary and staff members’ work time, would constitute an impermissible subsidization of a private enterprise with official funds.

Upon review of the cover letter you propose to send to your colleagues, the Committee notes that you make no request that the Members make donations to this fund. You merely pass along the Ambassador’s letter for their consideration. Therefore, it is the Committee’s view that sending out this “Dear Colleague” letter will not place you in violation of any House rules or states.<sup>178</sup>

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<sup>175</sup> See e.g., Letter from Charles Rangel to John L. Damonti, Bristol-Myers Squibb Foundation, dated June 13, 2005. CSOC.CBR.00002869- CSOC.CBR.00002870.

<sup>176</sup> Rangel Int. Tr. at 14-15.

<sup>177</sup> Butler Int. Tr. 11/14/08 at 28.

<sup>178</sup> Letter from Standards Committee Chairman Representative Julian C. Dixon and Ranking Minority Member Floyd D. Spence to Representative Charles B. Rangel, dated August 3, 1987. CSOC.CBR.00029317- CSOC.CBR.00029318.

“Dear Colleague” letters must be sent on official House letterhead and are routinely prepared by congressional staff. Representative Rangel’s letters on behalf of CCNY did not request money, but forwarded CCNY’s brochure which indicated the funds required to make the Rangel Center possible. It is also understandable that Representative Rangel did not consider CCNY, a public educational institution located in his congressional district, to be a “private enterprise.”

While none of these factors negate the fact that Representative Rangel committed numerous violations arising from his solicitation of donations to CCNY for the Rangel Center and his inaccurate Financial Disclosure statements, the Standards Committee should consider the measures Representative Rangel took as mitigating factors when recommending a sanction. As noted, a letter of reproof is a formal and public “rebuke of a Member’s conduct issued by a body of that Member’s peers acting, as the Standards Committee, on behalf of the House of Representatives.” By contrast, “reprimand is appropriate for serious violations”<sup>179</sup> and despite the number of violations involved, “it has been the *character* of the offenses ... which establish the level of punishment imposed, not the cumulative nature of the offenses.”<sup>180</sup> The character of Representative Rangel’s conduct does not reach the level of gravity that the Standards Committee and the House of Representatives have previously found to warrant the sanction of reprimand.

### III. Substantive Counts of the Statement of Alleged Violation

The evidence in this matter is clear that Representative Rangel violated various House Rules and other applicable standards. Specifically, once the conclusion is made that solicitations related to CCNY’s Rangel Center were not technically “official business,” then it follows that Representative Rangel’s conduct constitutes a violation of the House Rules regarding solicitations, Franking Commission regulations, House Office Building Commission regulations, the purpose law, the Member’s Congressional Handbook, and the letterhead rule.

I agree with my colleagues that Representative Rangel’s failures to provide a “full and complete statement” of his income, unearned income transactions and reportable positions is a violation of the Ethics in Government Act and House Rule XXVI. The totality of these violations constituted behavior which fails to “reflect creditably on the House.”<sup>181</sup> However, it is my belief that the record in this case lacked sufficient evidence to create a “substantial reason to believe”<sup>182</sup> that Representative Rangel committed the following counts included in the adopted and transmitted Statement of Alleged Violation:

1. Count II: Conduct in Violation of Code of Ethics for Government Service, cl. 5

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<sup>179</sup> Committee on Standards of Official Conduct Rule 24(g).

<sup>180</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative George V. Hansen*, H. Rep. 98-891, 98th Cong., 2d Sess. 390 (1984).

<sup>181</sup> House Rule XXIII, cl. 1.

<sup>182</sup> Committee on Standards of Official Conduct Rule 19(f).

2. Count III: Conduct in Violation of the House Gift Rule
3. Count V: Conduct in Violation of the Criminal Franking Statute
4. Count X: Conduct in Violation of Code of Ethics for Government Service, cl. 5

These counts should have not been charged in the Statement of Alleged Violation and cannot be sustained by the higher “clear and convincing evidence” standard at trial.

In addition, the following counts in the Statement of Alleged Violation are duplicative of other counts and should not have been charged, most notably:

1. Count XI: Conduct in Violation of Code of Ethics for Government Service, cl. 2
2. Count XII: Conduct in Violation of the Code of Conduct: Letter and Spirit of House Rules

A. Alleged Violations Related to the Receipt of an Impermissible Gratuity, Favor or Gift in Violation of the House Gift Rule or the Code of Ethics for Government Service

The record in this matter lacks sufficient evidence to create a substantial reason to believe that Representative Rangel violated the House gift rule (Count II) or clause 5 of the Code of Ethics for Government Service (Count III) related to his solicitations on behalf of CCNY’s Rangel Center. Clause 4 of House Rule XXIII states that a Member “may not accepts gifts except as provided by clause 5 of rule XXV.” House Rules provide that a Member may not knowingly accept a gift except as provided in that clause.<sup>183</sup> A “gift” is defined as “gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value.”<sup>184</sup> The Code of Ethics for Government Service<sup>185</sup> states:

[A]ny person in Government service should:

...

5. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.

The investigative subcommittee found that Representative Rangel solicited contributions for the City College of New York for the Rangel Center and CCNY did receive contributions from many of the entities that received Representative Rangel’s letters. Despite this fact, Representative Rangel did not violate House Rules or the Code of Ethics for Government

<sup>183</sup> House Rule XXV, cl. 5(a)(1)(A)(i)

<sup>184</sup> House Rule XXV, cl. 5(a)(2).

<sup>185</sup> 72 Stat., Part 2, B12, H. Res. 175, 85<sup>th</sup> Cong. (adopted July 11, 1958).



Service because he did not receive any gift, gratuity favor or other thing of value from any of the entities he solicited. Furthermore, the “indirect gift” rule does not apply to these facts. Representative Rangel’s efforts on behalf of CCNY were motivated by his desire to inspire underprivileged young people in his congressional district and should not be converted into an impermissible gift simply because he failed to fully comply with the Standards Committee’s instructions related to permissible solicitations. The investigative subcommittee did not find that Representative Rangel violated either the bribery or illegal gratuities statute. Although Representative Rangel’s conduct violated congressional rules regarding solicitations, he did not violate the Code of Ethics for Government Service, because Representative Rangel did not receive any illegal or impermissible benefits.

Representative Rangel has consistently demonstrated a commitment to creating and expanding access to education for minority youth. Howard University created the Charles B. Rangel International Affairs Fellowship Program which “seeks to attract and educate outstanding young people who desire a career in the Foreign Service.”<sup>186</sup> Congressman Rangel’s goal in helping to establish this program was “to create an excellent and diverse U.S. Foreign Service that represents the rich range of talents and expertise of the American people.”<sup>187</sup> The program is “funded by the U.S. Department of State and managed by the Ralph J. Bunche International Affairs Center at Howard University; these Fellowships prepare students to enter exciting and rewarding careers in public service as Foreign Service Officers.”<sup>188</sup> The Rangel Fellowship Program at Howard University encourages minority students and students with financial need to participate and ultimately pursue careers in international affairs.<sup>189</sup>

Likewise, Representative Rangel’s interest in facilitating CCNY’s creation of the Rangel Center was motivated by his desire to provide educational opportunities to minority and economically disadvantaged youth in his congressional district. According to Representative Rangel’s Chief of Staff during the relevant period:

Mr. Rangel has always had an interest, even a passion, for public service and for introducing underprivileged young people to the benefits of public service, the rewards being not always financial, but the rewards being, in his experience, just tremendously beneficial to one’s own self esteem and self image and what the community can benefit from somebody giving back. So he’s had a consistent desire to open up those doors of opportunity. ...

[H]e regards City College as sort of a jewel in his community and has always sought to get the college involved in what he regards as the

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<sup>186</sup> Available at [http://www.howard.edu/rjb/rangelprogram\\_old.htm](http://www.howard.edu/rjb/rangelprogram_old.htm).

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

greatest challenge he's ever faced, and that is the current generation where we're suffering a graduation rate among black and Hispanic males in New York City and in his community very specifically of less than 50 percent.  
...

So exposure to people in professions is important for people who come from really poor circumstances, and he has always and in recent years, particularly as we've seen in the appointments of well, from our own community, Ron Brown by President Clinton to be Commerce Secretary. Ron grew up in the Harlem community and made Charlie realize that his appointment would make more people from the community maybe think about what they may be able to achieve since they hadn't seen any of our kids, as you are well aware, see tremendous success in entertainment and basketball and other endeavors that are not within reach of most of the kids. So part of this has always been to try to get role models who really prove that they made it through education and through efforts that most people can apply themselves to as opposed to being physically or otherwise gifted.<sup>190</sup>

This characterization is consistent with Representative Rangel's own statements about his interest in CCNY's Rangel Center. In successfully defending an earmark request for CCNY for the Rangel Center on the House floor, Representative Rangel described his commitment to education in this way: "[a]nd in my community, where only four out of 10 kids manage to finish high school, I've devoted my entire life [to] working with the public and private sector in trying to keep our kids in school, and giving them the opportunity to get an education."<sup>191</sup> The Statement of Alleged Violation now attempts to portray mistakes in how Representative Rangel solicited on behalf of a public university's program to educate disadvantaged youth as corrupt conduct.

#### 1. Representative Rangel Did Not Receive Any Direct Benefits from Donations to CCNY to Create the Rangel Center

The record is clear that the direct benefits of the donations to CCNY's Rangel Center inure to CCNY and the students who participate in the Rangel Center's educational programs and not to Representative Rangel. The Statement of Alleged Violation in this matter indicates that Representative Rangel violated House Rules because the Rangel Center "provide[d] him with an office" and because the Rangel Center included "the storage and archiving of his papers." The "well furnished office" listed in the brochure for the Rangel Center cannot be considered a gift or other direct personal benefit to Representative Rangel. The record is clear that the office in the Rangel Center was not for Representative Rangel's personal use, but rather

<sup>190</sup> Interview of George Dalley, December 8, 2008 (hereinafter Dalley Int. Tr. 12/8/08) at 36-39.

<sup>191</sup> 153 Cong. Rec. H8133-34.

a venue so that Representative Rangel could further the aims of the Rangel Center. Representative Rangel testified before the investigative subcommittee, that he “would have no idea what I would do with [an office].”<sup>192</sup> Former CCNY President Gregory Williams testified that the intended purpose of the “well furnished office” in the Rangel Center was to provide students a place to meet Representative Rangel as part of their academic experience.<sup>193</sup> Furthermore, the office was an idea proposed by CCNY and ultimately abandoned by CCNY as well.<sup>194</sup> Based on these facts, the well furnished office mentioned in the Rangel Center brochure cannot be characterized as a direct personal benefit to Representative Rangel.

The allegation that Representative Rangel would receive an improper benefit from CCNY archiving his official congressional papers defies logic and common sense. Representative Rangel not only chose to donate his papers to CCNY, a public university located in his congressional district, but did so at the expense of several other prestigious universities located in New York City including Columbia University and New York University. Courts have consistently held that “Congress uses words in a statute as they are commonly understood.”<sup>195</sup> Interpreting Representative Rangel’s donation as an impermissible benefit or gift would be akin to finding that a Member received a gift because a homeless shelter agreed to come to a Member’s home and pick up donations of clothes, thus saving the Member the cost of disposing of the clothes in some other way.

To characterize Representative Rangel’s decision to donate his papers to CCNY as anything other than a gift *from* Representative Rangel *to* CCNY is completely inconsistent with the ordinary and plain meaning of the word gift. An overwhelming majority of the House of Representatives indicated their belief that neither the “well furnished office” nor the archivist/librarian to “organize, index and preserve for posterity all documents, photographs and memorabilia relating to Congress Rangel’s career” were direct benefits by voting against an attempt to eliminate an earmark designated for CCNY for the Rangel Center.<sup>196</sup> Representative John Campbell of California argued from the floor of the House that the Rangel Center provided direct personal benefits to Representative Rangel.<sup>197</sup> After the floor debate, which included a rebuttal from Representative Rangel, 316 of the 435 Members of the House voted against Representative Campbell’s “amendment (No. 62 printed in the Congressional Record of July 17, 2007) that sought to prohibit funds from being used for the Charles B. Rangel Center for Public Service, City College of New York, NY of the earmark.”<sup>198</sup> This vote demonstrates that Congress’ commonly understood meaning of the word “gift” excluded Representative Rangel’s proposed office and the archiving of his papers.

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<sup>192</sup> Rangel Int. Tr. at 16.

<sup>193</sup> Interview Transcript of Gregory H. Williams, May 15, 2009 (hereinafter Williams Int. Tr.) at 23-24.

<sup>194</sup> Butler Int. Tr. 11/14/08 at 28.

<sup>195</sup> *Morissette v. U.S.*, 342 U.S. 246 (1952).

<sup>196</sup> See 153 Cong. Rec. H8133-35 (daily ed. July 19, 2007).

<sup>197</sup> *Id.*

<sup>198</sup> 153 Cong. Rec. H8133-35; H8163-64 (daily ed. July 19, 2007).

Likewise, the naming of the Rangel Center does not constitute a direct personal benefit to Representative Rangel. The 2008 House Ethics Manual contemplates that Members will “lend their names to legitimate charitable enterprises and otherwise promote charitable goals,”<sup>199</sup> because the Members’ names add value to the event. Even where a Member’s affiliation with a charitable event enhances his reputation, the Committee has previously found that “[t]he receipt of an incidental benefit of publicity does not constitute ‘something of value’ under 5 U.S.C. Sec. 7353.”<sup>200</sup> Any benefit that Representative Rangel could possibly have received from his solicitations on behalf of CCNY would be intangible and of no meaningful value. Furthermore, any such benefit could not be considered a gift under the House gift rule because it was provided by CCNY, a local government agency.<sup>201</sup>

## 2. The “Indirect Gift” Rule Does Not Apply to Representative Rangel’s Conduct Related to CCNY

The “indirect gift” rule does not apply to Representative Rangel’s conduct in this matter because the alleged gift rule violation is predicated on Representative Rangel’s failure to properly solicit donations on behalf of CCNY pursuant to the guidance in the 2008 House Ethics Manual. As such, the investigative subcommittee should have referred to the restrictions placed on solicitations to determine whether Representative Rangel received a gift. Those limitations note that “no *direct* benefits may result to the soliciting official.”<sup>202</sup> The Manual does not provide any such restriction on indirect benefits resulting to the soliciting official.<sup>203</sup> Representative Rangel did not receive any direct benefits as a result of his solicitation for donations on behalf of the Rangel Center, only the publicity associated with its naming. That basis alone cannot constitute a gift under an “indirect gift” rule theory.

Fundamental fairness also dictates that the “indirect gift” rule should not apply to Representative Rangel’s conduct related to CCNY’s Rangel Center. Although generally, the publication of a statute alone affords “adequate notice to the public at large,”<sup>204</sup> 5 U.S.C. § 7353 authorizes the Standards Committee, as the supervising ethics office for the House, “to issue rules or regulations implementing the provisions of this section and providing for such reasonable exceptions as may be appropriate.”<sup>205</sup> Thus, the statute alone cannot provide sufficient notice of the requirements regarding solicitations and gifts. The House gift rule notes “[a]ll the provisions of this clause [the gift rule] shall be interpreted and enforced solely by the

<sup>199</sup> 2008 *House Ethics Manual* at 44 (citing H. Rep. 337, 104th Cong., 1st Sess. 12 (1995)).

<sup>200</sup> House Comm. on Standards of Official Conduct, *Summary of Activities—One Hundred Fourth Congress*, H. Rep. 104-886, 104<sup>th</sup> Cong., 2d Sess. § IV.A.3 (1997).

<sup>201</sup> House Rule 25, clause 5(a)(3)(O); see also 2008 *House Ethics Manual* at 55-6.

<sup>202</sup> 2008 *House Ethics Manual* at 348.

<sup>203</sup> *Id.* at 347-49.

<sup>204</sup> *U.S. v. Denis*, 297 F.3d 25, 28 (1st Cir. 2002)(citing *Roberts v. Maine*, 48 F.3d 1287, 1300 (1st Cir.1995) (Cyr, J., concurring)).

<sup>205</sup> 5 U.S.C. § 7353(b)(1).

Committee on Standards of Official Conduct.”<sup>206</sup> The Standards Committee is “authorized to issue guidance on any matter contained in this clause.”<sup>207</sup> The Office of Government Ethics<sup>208</sup> and the Judicial Conference Committee on Codes of Conduct<sup>209</sup> are the supervising ethics offices for the executive and judicial branches respectively; only the Standards Committee’s guidance is binding on Members and employees of the House of Representatives.<sup>210</sup> As such, notice of violations of an “indirect gift” rule pursuant to 5 U.S.C. § 7353 and the House gift rule must be published to Members by the Standards Committee before they can be held accountable for such conduct.<sup>211</sup> The investigative subcommittee now holds that where a Member or House employee has not complied fully with the Committee’s guidance with respect to a permissible solicitation, a gift to the proposed beneficiary of the solicitation will be attributed to the soliciting Member or House employee. If the investigative subcommittee now seeks to convert violations of the congressional solicitation rules into violations of the House gift rule under an “indirect gift” theory, it should publicly communicate that interpretation to Members before seeking to hold Representative Rangel accountable.

The House Rules make no mention of an “indirect gift” theory under the gift rule or that failure to comply with the restrictions on permissible solicitations on behalf of a 501(c)(3) organization, particularly a public university, will result in a gift rule violation. House Rule XXV, cl. 5(a)(2)(B)(i) only addresses “[a] gift to a family member of a Member ... or a gift to any other individual.” The term “individual” very commonly denotes “a private or natural person as distinguished from a partnership, corporation or association.”<sup>212</sup> Although “this restrictive signification is not necessarily inherent in the word,” the Committee has advised Members that the indirect gift rule theory was meant to apply to spouses or dependents.<sup>213</sup> The only guidance in the House rules related to donations to charitable organizations relates to “A Member ... who designates or recommends a contribution to a charitable organization in lieu of an honorarium.”<sup>214</sup> An honorarium is not considered a gift if it is reported according to the provisions outlined in a subsequent clause.<sup>215</sup> However, this guidance does not relate to solicitations or exceptions to the congressional solicitation rules.

The Standards Committee has not provided Members with sufficient notice that failure to follow the specific restrictions placed on solicitations on behalf of non-profit organizations can result in a violation of the House gift rule. The 1992 House Ethics Manual, which was the most current edition of the House Ethics Manual in circulation between 1992 and 2008, addressed

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<sup>206</sup> House Rule XXV, cl. 5(h).

<sup>207</sup> *Id.*

<sup>208</sup> Available at [http://www.usoge.gov/about/background\\_mission.aspx](http://www.usoge.gov/about/background_mission.aspx).

<sup>209</sup> Available at <http://www.uscourts.gov/rulesandpolicies/CodesOfConduct.aspx>.

<sup>210</sup> Available at [http://www.usoge.gov/about/matters\\_outside.aspx](http://www.usoge.gov/about/matters_outside.aspx).

<sup>211</sup> *Id.*

<sup>212</sup> BLACK’S LAW DICTIONARY 533 (Abridged 6<sup>th</sup> ed. 1991).

<sup>213</sup> See 1992 *House Ethics Manual* at 35.

<sup>214</sup> House Rule XXV, cl. 5(f).

<sup>215</sup> *Id.*

“indirect gifts,” advising Members that “[t]he word ‘indirectly’ has principal reference to gifts to the spouse or dependent of a Member.”<sup>216</sup> The 1992 version of the Manual includes a “Summary Opinion” related to “indirect gifts,” noting that “[g]ifts to a spouse or dependent are considered indirect gifts to the Member, officer, or employee for purposes of [then] House Rule XLIII, clause 4, unless such gifts are prompted by some consideration unrelated to the Member, officer, or employee.”<sup>217</sup> The 1992 House Ethics Manual also reminded Members that the Franking regulations prohibit “the use of the frank for the benefit of charitable organizations” but does not explain that failure to comply with this rule could also constitute a violation of the “indirect gift” rule outlined elsewhere in the Manual.<sup>218</sup>

The 1992 House Ethics Manual also includes an explanation of then, House Rule XLIII, clause 11, prohibiting Members from “authoriz[ing] or otherwise allow[ing] a non-House individual, group, or organization to use the words ‘Congress of the United States’, ‘House of Representatives’, or ‘official business’, or any combination of words thereof, on any letterhead or envelope.”<sup>219</sup> However, the entire list of restrictions and explanations regarding permissible solicitations found in the 2008 House Ethics Manual is not included in the 1992 version.<sup>220</sup> In addition, the 1992 House Ethics Manual does not include any language explaining to Members, officers and employees of the House that failure to comply with the restrictions on using the Frank on behalf of charitable organizations can result in a violation of the gift rule. The guidance related to “indirect gifts” specifically states that the provision is meant to “apply the gifts provision to spouses and dependents.”<sup>221</sup>

Guidance on how to comply with House Rules and other ethical guidelines, as noted in the House gift rule, are also conveyed to Members, staff and the public in “Memorand[a] for All Members Officers and Employees” (Pink Sheets) which are transmitted to Members and available to public. In addition, the Standards Committee issues “Dear Colleague” letters which are distributed to all Members and their offices, but may or may not be available to the general public. The Standards Committee has issued numerous “Dear Colleague” letters and Pink Sheets since 1992, when the previous version of the House Ethics Manual was published. This guidance has covered numerous topics related to solicitations and the gift rule including “Summary of

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<sup>216</sup> 1992 *House Ethics Manual* at 75.

<sup>217</sup> *Id.* at 77. In 2000, the Standards Committee released a supplemental document entitled “Rules of the U.S. House of Representatives on Gifts and Travel” (106th Cong. 2d Sess. April 2000). This document also addresses the applicability of the House gift rule to “Spouses, Family Members and Others,” but does not advise Members that failure to properly follow the Committee’s guidance regarding permissible solicitations on behalf of 501(c)(3) organizations could result in a violation of the House gift rule. *Rules of the U.S. House of Representatives on Gifts and Travel* at 15-6 (106th Cong. 2d Sess. April 2000).

<sup>218</sup> *Id.* at 227.

<sup>219</sup> *Id.* at 325 (citing Committee on Standards of Official Conduct Advisory Opinion No. 5, issued April 4, 1979 and former House Rule XLIII, clause 11).

<sup>220</sup> Compare 2008 *House Ethics Manual* at 348-49 to 1992 *House Ethics Manual* at 319-320.

<sup>221</sup> 2008 *House Ethics Manual* at 76.

New Restrictions on Solicitation;”<sup>222</sup> “Rules Governing (1) Solicitation by Members, Officers and Employees in General, and (2) Political Fundraising Activity in House Offices;”<sup>223</sup> “Amendment of the House Gift Rule;”<sup>224</sup> and “Recent Gift Rule Amendments.”<sup>225</sup> None of the “Dear Colleague” letters sent to all Members and staff or the publicly available Pink Sheets advises Members that failure to properly adhere to the restrictions for permissible solicitations on behalf of a 501(c)(3) organization can result in not only a violation of congressional solicitation rules, but also a violation of the gift rule.

The Standards Committee has also issued guidance in collaboration with the Committee on House Administration regarding solicitations on behalf of 501(c)(3) organizations in the aftermath of national and international tragedies. After the terrorist attacks of September 11, 2001, Hurricane Katrina in 2005, and the 2010 earthquake in Haiti, the Standards Committee or the Committee on House Administration have reminded Members that they cannot use official House resources to solicit on behalf of 501(c)(3) organizations, even to support charitable efforts of this grand magnitude. This guidance, however, makes no mention that failure to properly follow the restrictions on solicitations will result in an impermissible gift being attributed to the soliciting Member or staff person. On September 14, 2001, the Commission on Congressional Mailing Standards advised Members:

While we understand the good intentions of those making such inquiries, we must remind all Members that it is a violation of law to use the frank to solicit contributions in support of any charitable organization or purpose. This prohibition also extends to solicitations of goods or services, including food and clothing.<sup>226</sup>

This letter does not advise Members that failure to properly follow the restrictions on solicitations will result in an impermissible gift being attributed to the soliciting Member.

On September 2, 2005, the Committee on House Administration advised Members:

While we understand the good intentions of those making such inquiries, we must remind all Members that it is a violation of law to use the frank to solicit anything in support of any charitable organization or purpose. Members should also not use their websites to solicit anything. More

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<sup>222</sup> Memorandum for All Members, Officers and Employees, from Committee on Standards of Official Conduct, dated April 4, 1995.

<sup>223</sup> Memorandum for All Members, Officers and Employees, from Committee on Standards of Official Conduct, dated April 25, 1997.

<sup>224</sup> Memorandum for All Members, Officers and Employees, from Committee on Standards of Official Conduct, dated January 22, 1999.

<sup>225</sup> Memorandum for All Members, Officers and Employees, from Committee on Standards of Official Conduct, dated April 11, 2003.

<sup>226</sup> Dear Colleague letter from Representative Robert W. Ney and Representative Steny Hoyer, dated September 14, 2001.

broadly, regulations of the Committee on Standards of Official Conduct prohibit the use of any official resources to solicit funds for charitable organizations or purposes and prohibit Members from implying that such organizations or purposes have been endorsed by the House of Representatives. To summarize, Members and staff may not use official resources to solicit anything for charities.<sup>227</sup>

This letter does not advise Members that failure to properly follow the restrictions on solicitations will result in an impermissible gift being attributed to the soliciting Member.

On January 20, 2010, the Chair and Ranking Members of the Standards Committee and the Committee on House Administration issued a joint “Dear Colleague” letter regarding “Helping the Victims of the Haiti Earthquake.” This letter noted:

Members have asked to what extent they may use their official resources to solicit or collect donations of goods, funds, or services on behalf of charities and other private organizations involved in relief efforts.

We understand the good intentions of those making such inquiries, but the rules of the House preclude Members from using official resources for any purpose other than in support of the conduct of the Member’s official and representational duties on behalf of the district which he or she currently represents. This has, in the past, been interpreted to mean that charitable solicitations using official resources are not permitted.<sup>228</sup>

None of the “Dear Colleague” letters or Pink Sheets distributed to all Members, officers, and staff of the House regarding solicitations or the gift rule advises Members that failure to properly follow the restrictions on solicitations will result in an impermissible gift being attributed to the soliciting individual.

Like the 1992 edition published before it, the 2008 House Ethics Manual discusses the applicability of the House gift rule “to spouses, family members and others”<sup>229</sup> but makes no mention of the investigative subcommittee’s conclusion that failure to follow the Standards Committee’s guidance on soliciting on behalf of non-profit organizations is also a gift rule violation. Likewise, the Manual’s section regarding permissible solicitations on behalf of non-profit organizations does not address an “indirect gift” rule.<sup>230</sup> This portion of the Manual includes a lengthy discussion about areas of overlap between the congressional solicitation rules

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<sup>227</sup> Dear Colleague letter from Representative Robert W. Ney and Representative Juanita Millender-McDonald, dated September 2, 2005.

<sup>228</sup> Dear Colleague letter from Representative Robert A. Brady, Representative Daniel E. Lungren, Representative Zoe Lofgren and Representative Jo Bonner, dated January 20, 2010.

<sup>229</sup> 2008 *House Ethics Manual* at 33.

<sup>230</sup> *Id.* at 349.



and the gift rule, but makes no mention of “indirect gifts.” Likewise, the Members’ Handbook does not address areas of overlap between the congressional solicitation rules and the House gift rule at all.

Despite the lack of prior guidance in the House Rules, “Dear Colleague” letters, Pink Sheets, the House Ethics Manual or the Members’ Handbook about the overlap between the congressional solicitation rules and an “indirect gift” rule violation, the Statement of Alleged Violation now proposes that approval by the Standards Committee of an exception to the solicitation rules also serves as approval of an exception to the ban on the acceptance of any gift to the proposed beneficiary resulting from the solicitation that may be attributable to the soliciting Member or House employee. None of this guidance advised Representative Rangel that his work on behalf of a public university was not a part of his official duties. The investigative subcommittee’s Statement of Alleged Violation serves as public notice of this new interpretation of the gift rule, but fairness and justice require that such notice does not come at the expense of a Member, here Representative Rangel, who also lacked prior guidance on this issue. Because the Standards Committee is responsible for issuing regulations and guidance related to compliance with 5 U.S.C. § 7353, the statute alone is not sufficient guidance regarding this application of the “indirect gift” rule.

3. Even if the “Indirect Gift” Rule Applied to this Set of Facts, There is Insufficient Evidence in the Record to Show that Representative Rangel Violated this Rule

Under the “indirect gift” rule, “a gift to a family member or another individual will be deemed to be a gift to the official when two circumstances are present:

- The gift was given with the knowledge and acquiescence of the Member or staff person; and
- The Member or staff person has —reason to believe the gift was given because of his official position— with the House.”<sup>231</sup>

The example provided in the House Ethics Manual is illustrative of how the “indirect gift” rule should be applied:

A Member is throwing a graduation party for her daughter. A lobbyist who does not know the Member’s daughter offers to buy the daughter a television. The television would be considered a gift to the Member and must be declined.<sup>232</sup>

Although Representative Rangel’s letters asked for an opportunity to “dialogue” on how to fund the Rangel Center, Representative Rangel had no reason to believe that such donations were

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<sup>231</sup> House Rule XXV cl. 5(a)(2)(B)(i); see also 2008 *House Ethics Manual* at 33.

<sup>232</sup> 2008 *House Ethics Manual* at 33-34.

given because of his official position. While Representative Rangel sent one or more letters to over one hundred private foundations, only a handful of them agreed to donate to CCNY's Rangel Center. The overwhelming majority of the foundations that received Representative Rangel's letter either refused to donate to CCNY's Rangel Center or simply did not reply at all. These facts indicate that Representative Rangel would be reasonable in presuming that his official position was not the reason that foundations decided to donate to the Rangel Center.

The organizations that did make donations to the Rangel Center were known for their commitment to education and diversity. For example, the Verizon Foundation's core initiatives include "education and literacy." In 2004, the Verizon Foundation "concentrated on educational, community & innovative organizations that are 501(c)(3) exempt status,"<sup>233</sup> donating over \$4.9 million to its top grantee, 100 Black Men of America.<sup>234</sup> The facts in the record indicate that the Verizon Foundation was familiar with the City College of New York prior to Representative Rangel's solicitations on their behalf. Verizon Inc. Chief Executive Officer Ivan Seidenberg is a 1972 graduate of CCNY's parent institution, the City University of New York. In 2004, the Verizon Foundation donated \$1,320 to the City College Fund. Verizon Foundation's 2004 donation to CCNY indicates that the foundation deemed CCNY a worthy grant recipient prior to Representative Rangel's solicitation of donations on behalf of the college. The Verizon Foundation's \$500,000 pledged donation to CCNY was also comparable in size to several other donations the foundation made during the same period.

Likewise, the Starr Foundation identifies education as its top priority. The Starr Foundation's website states, "[t]raditionally education has been one of the largest areas of giving for the Foundation, because of Mr. Starr's personal interest in providing scholarships to deserving students. The Foundation has endowed C.V. Starr Scholarship Funds at more than 100 colleges and universities and selected secondary schools."<sup>235</sup> In 2004, the Starr Foundation donated \$1.25 million to Claremont University Center<sup>236</sup> and nearly \$2 million to Columbia University in New York.<sup>237</sup> Because the organizations that Representative Rangel solicited and that ultimately donated to the Rangel Center had an established history of making donations to educational and diversity programs, he did not have reason to believe that their donations to CCNY for the Rangel Center were given because of his official position.

The sole basis for the investigative subcommittee's conclusion that Representative Rangel's conduct violated the second element of the "indirect gift" rule is that he did not abide by the parameters listed for permissible solicitations on behalf of a 501(c)(3) organization. However, Members are allowed to lend their names to such solicitations; in fact, "[i]t is

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<sup>233</sup> Calendar Year 2004 Form 990-PF for the Verizon Foundation, at 9, available at [http://foundation.verizon.com/about/financials/vz990\\_04.pdf](http://foundation.verizon.com/about/financials/vz990_04.pdf).

<sup>234</sup> *Id.* at 9.

<sup>235</sup> Available at <http://www.starrfoundation.org/priorities.html>.

<sup>236</sup> Calendar Year Form 990-PF for the Starr Foundation, at 86 available at [http://dynamodata.fdncenter.org/990pf\\_pdf\\_archive/136/136151545/136151545\\_200412\\_990PF.pdf](http://dynamodata.fdncenter.org/990pf_pdf_archive/136/136151545/136151545_200412_990PF.pdf).

<sup>237</sup> *Id.* at 86-87.

permissible for Members to identify themselves as a Member of Congress, Congressman, Congresswoman, Representative, or by using their leadership title” in a solicitation letter.<sup>238</sup> There is no evidence that Representative Rangel made a conscious choice to use official resources because he believed doing so would compel organizations to donate to CCNY for the Rangel Center. There is also no evidence that potential donors to CCNY for the Rangel Center were in fact influenced by Representative Rangel’s use of official letterhead and resources. Representative Rangel could have written potential donors using his personal letterhead using his leadership title, which is permissible under House Rules, and the impact would have been the same. Representative Rangel admitted that his use of official resources to solicit on behalf of CCNY was a mistake based on his belief that doing so was a part of his official duties. That error, however, is already addressed in Counts I, IV, VI, VII, and VIII of the Statement of Alleged Violation.

Furthermore, the Statement of Alleged Violation in this matter incorrectly states that “[c]ontributions to the Rangel Center constituted indirect gifts attributable to Respondent ... These indirect gifts do not fall within any exception of clause 5 of House Rule XXV.” House Rules explicitly exclude “[a]nything that is paid for by the Federal Government, by a State or local government, or secured by the Government under a Government contract,” from the term “gift.”<sup>239</sup> Public universities, such as CCNY, are considered state agencies under this rule.<sup>240</sup> This provision is a “broad” one “which extends to tangible items of all kinds, as well as meals, services, and travel.”<sup>241</sup> The exception’s “paid for by” language ... is especially important. Thus, under this provision, Members and staff may not accept a gift from a government agency when the gift was donated to the agency by a third party, and the agency is merely acting as a conduit.”<sup>242</sup> Here, however, CCNY is not acting as a conduit for donations from contributors to the Rangel Center to Representative Rangel; CCNY has not provided Representative Rangel with money or any other direct tangible benefit, as explained above. The Rangel Center has not and will not provide Representative Rangel with any item of value other than the indirect benefit of publicity because the Center bears his name. Because the “paid for by ... local government” exception applies here, Representative Rangel cannot be found to be in violation of the House gift rule. The Standards Committee has traditionally permitted private companies to donate to charities at events honoring Members of Congress or to charities headed by a Member’s spouse or close associates. If donations to charities which have a close affiliation with a particular Member or Members of Congress become subject to ethics violations, such a decision would set a disturbing precedent.

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<sup>238</sup> 2008 *House Ethics Manual* at 348.

<sup>239</sup> House Rule XXV, cl. 5(a)(3)(O).

<sup>240</sup> See 2008 *House Ethics Manual* at 56 (“*Example 39*. A state university in a Member’s district offers the Member tickets to an upcoming home game of one of its teams. The Member may accept the tickets under this provision.”)(emphasis supplied).

<sup>241</sup> 2008 *House Ethical Manual* at 55.

<sup>242</sup> *Id.* at 56.

Despite my colleagues' application of the "indirect gift" rule in the Statement of Alleged Violation, there is no reason to go through such extensive legal gymnastics to show that Representative Rangel violated applicable standards related to his letters on behalf of CCNY, a public university in his congressional district. Pursuant to 5 U.S.C. § 7353 and the exceptions outlined in the House Ethics Manual, Members are prohibited from making solicitations on behalf of non-profit organizations unless they follow very specific rules. Representative Rangel did not follow these rules. Neither of the examples of impermissible "indirect gifts" identified in the House Ethics Manual is applicable to Representative Rangel's conduct. In addition to the graduation party example above, the Manual further provides:

A lawyer offers tickets to a sporting event to a Member without charge. The Member does not want the tickets, and he suggests instead that the lawyer give them to a friend of the Member. In these circumstances, a gift of the tickets to the Member's friend would be deemed a gift to the Member himself and would be permissible only if the Member himself could accept the tickets under the gift rule.<sup>243</sup>

There is no evidence that any of the organizations solicited by Representative Rangel offered him any benefit that he then suggested they transfer to CCNY. Representative Rangel solicited donations on behalf of CCNY in a manner which did not meet the Standards Committee's guidance for permissible solicitations, which is why I voted in favor of Counts I, IV, VI, VII and VIII in this Statement of Alleged Violation. It is unnecessary to try to bootstrap violations of the House gift rule and clause 5 of the Code of Ethics for Government Service onto this conduct.

#### B. Alleged Violation of the Criminal Franking Statute

The record in this matter lacks sufficient evidence to create a substantial reason to believe that Representative Rangel violated the criminal Franking statute codified at 18 U.S.C. § 1719. The statute states, "[w]hoever makes use of any official envelope, label, or indorsement authorized by law, to avoid the payment of postage or registry fee on his private letter, packet, package, or other matter in the mail, shall be fined under this title."<sup>244</sup> While it is clear that Representative Rangel misused the Frank by using it to send letters soliciting donations on behalf of CCNY, that fact alone cannot constitute a violation of the criminal Franking statute. This interpretation is required because criminal statutes, unlike, civil statutes and regulations, generally have a *mens rea* or "mental state" requirement even if the statute is silent on the issue.<sup>245</sup> The Supreme Court has noted that offenses that require no *mens rea* are generally disfavored,<sup>246</sup> because "[t]he existence of a *mens rea* is the rule of, rather than the exception to,

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<sup>243</sup> *Id.* at 34.

<sup>244</sup> 18 U.S.C. § 1719.

<sup>245</sup> *Staples v. United States*, 511 U.S. 600, 605 (1994).

<sup>246</sup> *Id.* at 606.

the principles of Anglo-American criminal jurisprudence.”<sup>247</sup> Although in some cases, the Court has looked to statutory construction and made inferences about the intent of Congress regarding *mens rea*, the plain language of the statute is “the starting place in our inquiry.”<sup>248</sup> The criminal Franking statute provides explicit guidance in this case.<sup>249</sup>

In construing and applying any statute, courts “must first look to the plain meaning of the statute itself;” review of legislative history is unnecessary if the statute is unambiguous.<sup>250</sup> The plain language of the criminal Franking statute is clear. In order to find that Representative Rangel violated the statute, the evidence must also show that he misused the Frank “to avoid the payment of postage or registry fee on his private letter.”<sup>251</sup> Courts often determine the plain meaning of words in a statute by referring to dictionaries;<sup>252</sup> the Standards Committee has also adopted this practice.<sup>253</sup> The use of the word “to” in the criminal Franking statute creates a criminal violation only if the accused uses the Frank for the purpose of avoiding the payment of postage. According to the Merriam Webster’s Dictionary, the word “to” is used “for expressing aim, purpose, or intention, [as in] going to the rescue.”<sup>254</sup> “To” is also “[u]sed as a function word to indicate purpose, intention, tendency, result or end,” as in “came to our aid” or “drank to his health.”<sup>255</sup> “To” can also mean “[f]or the purpose of” as in “went out to lunch.”<sup>256</sup>

Another fundamental tenet of statutory interpretation is that “[i]t is the duty of the court to give effect, if possible, to every clause and word of a statute, avoiding, if it may be, any construction which implies that the legislature was ignorant of the meaning of the language it employed.”<sup>257</sup> Courts have consistently held “every part of a statute be presumed to have some effect, and not be treated as meaningless unless absolutely necessary.”<sup>258</sup> The criminal Franking statute requires a showing that the accused intended to avoid the payment of postage because to interpret the statute otherwise would eviscerate the effect or meaning of the word “to” and the phrase “to avoid the payment of postage or registry fee on his private letter.” We must “assume,

<sup>247</sup> *United States v. United States Gypsum Co.*, 438 U.S. 422, 436 (1978).

<sup>248</sup> *See Staples*, 511 U.S. at 605 (citing *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253-254 (1992)).

<sup>249</sup> *Id.*

<sup>250</sup> *Solis-Ramirez v. United States Department of Justice*, 758 F.2d 1426, 1430 (11th Cir. 1985); *see also Paul Revere Ins. Group v. U.S.*, 500 F.3d 957 (9th Cir. 2007).

<sup>251</sup> 18 U.S.C. § 1719.

<sup>252</sup> *See e.g., Fruit v. Astrue*, 604 F.3d 1217, 1220 (10th Cir. 2010); *see also Energy East Corp. v. U.S.*, 92 Fed.Cl. 29, 34 (Fed. Cl. 2010) (“When a common term is not defined by the statute, it is appropriate to consult a dictionary to determine its plain meaning.”)

<sup>253</sup> *See House Comm. on Standards of Official Conduct, In the Matter of Representative John J. McFall*, H. Rep. 95-1742, 95th Cong., 2d Sess. at 20 (1978).

<sup>254</sup> WEBSTER’S NINTH NEW COLLEGIATE DICTIONARY (9th ed. 1990).

<sup>255</sup> Available at <http://dictionary.reference.com/browse/TO>.

<sup>256</sup> *Id.*

<sup>257</sup> *DataMill, Inc. v. U.S.*, 91 Fed.Cl. 740, 755 (2010); *see also Global Computer Enterprises, Inc. v. U.S.*, 88 Fed.Cl. 350, 412 (2009).

<sup>258</sup> *Raven Coal Corp. v. Absher*, 153 Va. 332 (1929); *see also U.S. v. Frank*, 599 F.3d 1221, 1234 (11th Cir. 2010) (“The Third Circuit Court of Appeals “interpret[s] words that are not defined in a statute “with their ordinary and plain meaning because we assume that Congress uses words in a statute as they are commonly understood; we give each provision full effect.”)(citing *United States v. Veal*, 153 F.3d 1233, 1245 (11th Cir.1998)).

for example, that every word in a statute has meaning and avoid interpreting one part of a statute in a manner that renders another part superfluous.”<sup>259</sup>

The criminal Franking statute creates a violation that is different than those available under the postal service laws and Franking commission regulations. Section 3215 of Title 39 provides that “a person entitled to use a Frank may not . . . permit its use by any person for the benefit or use of any committee, organization, or association.”<sup>260</sup> The Regulations on the Use of the Congressional Frank by Members of the House of Representatives (“Franking Regulations”) interpret this statute as prohibiting “the use of the Frank for the benefit of charitable organizations, political action committees, trade organizations, and so forth.”<sup>261</sup> A person violates the postal service laws and the Franking regulations simply by using the Frank for the benefit of a non-profit organization. However, proving a violation of the criminal Franking statute requires facts which are not in evidence.

The record is clear that Representative Rangel did not use the Frank for the purpose of avoiding paying for postage. The suggestion that Representative Rangel committed a criminal act to avoid paying for a relatively small amount worth of stamps does not make sense. Representative Rangel testified that he used official resources to solicit donations on behalf of CCNY because he believed that doing so was consistent with his official duty to represent the 15<sup>th</sup> congressional district of New York. Although Representative Rangel’s letters were not Frankable items, Representative Rangel mistakenly thought they were permissible items to send using the Frank. Representative Rangel has admitted to violating the civil postal service laws and Franking regulations. Based on the facts in the record, there is not a substantial reason to believe that Representative Rangel also violated the criminal Franking statute codified at 18 U.S.C. § 1719. Likewise, this charge cannot be sustained by the higher “clear and convincing evidence” standard at trial.

#### C. Alleged Violation Related to Representative Rangel’s Tenancy in Lenox Terrace

The record in this matter lacks sufficient evidence to create a “substantial reason to believe” that Representative Rangel violated clause 5 of the Code of Ethics for Government Service related to his use of a rent-stabilized apartment in the Lenox Terrace building complex as a campaign office. This charge cannot be sustained by the higher “clear and convincing evidence” standard at trial. The Code of Ethics for Government Service (72 Stat., Part 2, B12, H. Res. 175, 85<sup>th</sup> Cong.) (adopted July 11, 1958) provides:

[A]ny person in Government service should:

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<sup>259</sup> *Disabled in Action of Pennsylvania v. Southeastern Pennsylvania Transp. Authority*, 539 F.3d 199, 211 (3d Cir. 2008).

<sup>260</sup> 39 U.S.C. § 3215.

<sup>261</sup> Franking Regulations at 3.

5. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.

Representative Rangel used a rent-stabilized apartment (apartment 10U) at Lenox Terrace, as an office for Rangel for Congress and National Leadership PAC. The terms of the lease for the rent stabilized apartment provided that the apartment was to be used “for living purposes only.”<sup>262</sup>

Despite these facts, there is not a substantial reason to believe that Representative Rangel’s conduct violated clause 5 of the Code of Ethics for Government Service because Representative Rangel did not receive a “favor” or “benefit” from his landlord, the Olnick Organization (Olnick). The evidence in the record indicates that Representative Rangel paid the maximum rent allowable under New York’s rent-stabilization laws and that his use of apartment 10U as a campaign office did was permitted under the code. Although there is evidence that the Olnick employees who worked in the Lenox Terrace complex were aware that Representative Rangel was using apartment 10U as a campaign office, there is inconclusive evidence in the record about whether Olnick management was aware of Representative Rangel’s use of apartment 10U. Olnick could not have given Representative Rangel a favor or benefit it was not aware it was providing. Olnick could not have provided Representative Rangel with a favor or benefit related to his use of a rent-stabilized apartment for nonresidential purposes because Olnick allowed other tenants to do the same, never had an established policy regarding such conduct and because doing so was a rational business decision by Olnick. In addition, Representative Rangel has never offered to or actually provided Olnick with any benefit and his legislative work does not have any direct relationship to Olnick.

1. There is Insufficient Evidence to Create a Substantial Reason to Believe that Olnick Provided Representative Rangel with a Gratuity, Favor or Benefit
  - a. Representative Rangel Did Not Violate Rent-Stabilization Laws

The investigative subcommittee did not find that Representative Rangel violated any of New York’s rent stabilization laws. The New York City Rent Stabilization Law (RSL) of 1969 is the principal statute that established rent stabilization regulation in New York City. The Rent Stabilization Code (Code), issued by the New York State Division of Housing and Community Renewal (DHCR), is a codification of the laws and procedures of the RSL. “An acknowledged purpose of the Code is to secure from eviction during a period of scarcity in rental accommodations, those tenants who actually require and actively use their apartments for dwelling purposes,” but New York law does not actually require a landlord to either evict a tenant or seek to destabilize a rent stabilized apartment for a non-residential use.<sup>263</sup> Although the

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<sup>262</sup> CSOC.CBR.00006136.

<sup>263</sup> *Sommer v. Ann Turkel, Inc.* (137 Misc. 2d 7, 10).

policy reasons for providing rent-stabilization protection include preserving the availability of low-income housing for tenants, the statutory language indicates that “low-income” currently includes individuals whose annual income is as much as \$175,000 and previously \$250,000.<sup>264</sup>

When Sheldon Melnitsky, managing attorney of the New York State Department of Housing and Community Renewal, was asked if the laws governing rent stabilized units permits them to be “used for business or non-residential purposes,” he replied, “Yes, it does.”<sup>265</sup> He noted, “[t]here is nothing in the law which requires an owner to use these units for residential purposes. And, as a matter of fact, based upon New York case law, there would be the potential constitutional issue is we actually compelled an owner to use these units for residential purposes.”<sup>266</sup> Melnitsky further explained that if a landlord is aware at the time of leasing or lease renewal that the tenant does not intend to use the rent-stabilized unit for a personal residence, the landlord can still lawfully continue to lease the unit because “[a]t any time subsequent, he can pursue this nonprimary residence proceeding.”<sup>267</sup> The Code does not require that a landlord seek repossession of the apartment, nor does the apartment automatically become destabilized.<sup>268</sup> However, if a tenant is not using a rent stabilized apartment as a primary residence, a landlord has discretion not to renew the lease.<sup>269</sup> New York rent stabilization laws empower a landlord to use his or her best business judgment and discretion to decide how to address tenants who are not using a rent stabilized unit as their primary residence.<sup>270</sup>

b. The Evidence in the Record Demonstrates that Representative Rangel Was Not Given a Preferential Rent Payment

Representative Rangel could not have received a favor or benefit from his landlord because he was paying the highest legal rent allowable for apartment 10U. Representative Rangel’s rent was comparable to that of his neighbors in other U-line apartments. Representative Rangel began renting apartment 10U in 1996 at \$500.19.<sup>271</sup> At that time, the rents for the other U-line units in 40 West 135<sup>th</sup> Street ranged from \$430.84 through \$503.42.<sup>272</sup> Likewise, when Representative Rangel moved out of apartment 10U in 2008, his monthly rent was \$682.56.<sup>273</sup> In 2008, the rents for the other U-line apartments ranged from \$637.22 through \$902.42.<sup>274</sup> Jennifer Filippelli, who was responsible for lease renewals for rent-stabilized apartments, rent-collections, landlord-tenant court including luxury deregulations, and security deposit refunds at Lenox

<sup>264</sup> 9 NYCRR §§ 2531.3 and 2531.4.

<sup>265</sup> Garfinkle and Melnitsky Int. Tr. at 31.

<sup>266</sup> *Id.*

<sup>267</sup> *Id.* at 34.

<sup>268</sup> 9 NYCRR §§ 2520.6(u) and 2524.4(e).

<sup>269</sup> 9 NYCRR § 2524.4.

<sup>270</sup> Garfinkle and Melnitsky Int. Tr. at 32-33.

<sup>271</sup> *See* CSOC.CBR.00006136; *see also* CSOC.CBR.00029308.

<sup>272</sup> *See* CSOC.CBR.00029314.

<sup>273</sup> *Id.*

<sup>274</sup> *Id.*



Terrace,<sup>275</sup> reviewed Representative Rangel's tenant files and testified that he was paying the maximum allowable rent under New York's rent stabilization guidelines.<sup>276</sup> Attorneys from the New York Department of Housing and Community Renewal also reviewed relevant documents and determined that Representative Rangel did not receive preferential rent.<sup>277</sup>

c. The Record is Unclear Regarding Whether Olnick Management Knew Representative Rangel was Using Apartment 10U as a Campaign Office

The record is unclear as to whether Representative Rangel's landlord knew that he was using apartment 10U as a campaign office. Olnick management's knowledge is relevant because Representative Rangel's landlord cannot give a gratuity it does not know it is giving. The documents suggest that Olnick management should have known about Representative Rangel's use of apartment 10U as a campaign office, but was not actually aware of this fact. While Representative Rangel paid the rent for apartments 16N-P and 16M from his personal funds, many of the rent checks for apartment 10U came from Rangel for Congress.<sup>278</sup> Maintenance requests for apartment 10U came from Rangel campaign staff, rather than from Representative Rangel himself.<sup>279</sup> Indeed, the assistant superintendent for Lenox Terrace indicated that he knew Representative Rangel's campaign staffer, Walter Swett, and that the doormen were also familiar with campaign staff.<sup>280</sup> Although members of the Olnick management structure claimed that they did not know about Representative Rangel's non-conforming use of apartment 10U until after the media reports regarding Representative Rangel's use of the apartment in 2008, their subordinates that worked in the building were well aware.

The numerous witnesses interviewed by the investigative subcommittee possessed varying degrees of knowledge about Representative Rangel's use of apartment 10U as a campaign office. Most of the Lenox Terrace maintenance and building management staff including Dion Keene and Peter Soundias knew that Representative Rangel was using apartment 10U as a campaign office.<sup>281</sup> Walter Swett indicated that everyone in the building knew who he was and that he worked for Representative Rangel.<sup>282</sup> Furthermore, Swett said that the building doormen knew who he was and allowed him to enter the building unannounced.<sup>283</sup> Darryl Rankin, who served as General Manager of the property was aware that apartment 10U was a campaign office and spoke with Representative Rangel's campaign staff about maintenance.<sup>284</sup>

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<sup>275</sup> Filippelli Int. Tr. 11/21/08 at 5-6.

<sup>276</sup> *Id.* at 26.

<sup>277</sup> Garfinkle Memo at 2. CSOC.CBR00026908-10.

<sup>278</sup> *See e.g.*, CSOC.CBR.00000997

<sup>279</sup> Interview Transcript of Darryl Rankin, November 18, 2008 (hereinafter Rankin Int. Tr. 11/18/08) at 22-23.

<sup>280</sup> Soundias Int. Tr. at 23.

<sup>281</sup> Keene Int. Tr. at 15; Soundias Int. Tr. at 7.

<sup>282</sup> Interview of Walter Swett (hereinafter Swett Int. Tr.) at 26-27.

<sup>283</sup> *Id.* at 26; 72.

<sup>284</sup> Rankin Int. Tr. 11/18/08 at 22-23.

There is also no evidence that the Lenox Terrace staff interviewed by the investigative subcommittee informed their superiors in Olnick about Representative Rangel's use of apartment 10U as a campaign office. Some of the Lenox Terrace staff did not believe that using a rent-stabilized apartment as an office was a non-conforming use because they were familiar with other tenants who operated businesses from their apartments.<sup>285</sup>

The testimony provided by witnesses who served in management positions within Olnick provided an equally convoluted picture. Olnick President Simon said that he did not know the specifics of Representative Rangel's occupancy at Lenox Terrace and had no knowledge of a campaign office prior to the news reports in 2008.<sup>286</sup> Former Chief Operating Officer Rubler was interviewed twice in this matter and on both occasions, testified that he was unaware that Representative Rangel was using apartment 10U as a campaign office.<sup>287</sup> However, Robert Risetto, Olnick's Vice President of Management and Leasing until from September 2001 until June 2007,<sup>288</sup> testified that he informed Rubler of Representative Rangel's non-conforming use of apartment 10U in either 2004 or 2005.<sup>289</sup> Risetto indicated that although he was aware of Representative Rangel's use of apartment 10U as a campaign office, he deferred to Rubler to make a decision about how to proceed.<sup>290</sup> The evidence indicates Representative Rangel's use of apartment 10U as a campaign office was open and notorious; his rent for the apartment was paid by Representative Rangel's campaign checks. Given Rubler and Simon's statements to the investigative subcommittee, the lack of specificity in Risetto's testimony about his exchange with Rubler and the absence of any documentary evidence to resolve the inconsistency in the witnesses' testimony, there is insufficient evidence to establish that Olnick knew Representative Rangel was using apartment 10U as a campaign office.

d. There is Evidence in the Record Indicating that Olnick Allowed Tenants other than Representative Rangel to Use Rent-Stabilized Units as a Business or Office

Olnick could not have provided Representative Rangel with a gratuity, favor or benefit in allowing him to use apartment 10U as a campaign office if that same privilege was "offered to members of a group or class in which membership is unrelated to congressional employment,"<sup>291</sup> such as the larger Lenox Terrace tenant population. The evidence in the record suggests that Olnick did just that. Regardless of whether Olnick management had knowledge of Representative Rangel's use of apartment 10U as a campaign office, the record is clear that

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<sup>285</sup> See e.g., Soundias Int. Tr. at 17-19; see also Rankin Int. Tr. 5/14/09 at 57.

<sup>286</sup> Interview Transcript of Bruce Simon, December 8, 2008 (hereinafter Simon Int. Tr. 12/8/08) at 40.

<sup>287</sup> Interview Transcript of Neil Rubler, May 15, 2009 (hereinafter Rubler Int. Tr. 5/15/09) at 29; Rubler Int. Tr. 7/14/09 at 24.

<sup>288</sup> Interview Transcript of Robert Risetto (hereinafter Risetto Int. Tr.) at 8-9.

<sup>289</sup> *Id.* at 83.

<sup>290</sup> *Id.* at 82-83.

<sup>291</sup> House Rule XXV, cl. 5(a)(3)(R); see also 2008 *House Ethics Manual* at 67.

Olnick did not have a coherent policy on the use of rent-stabilized apartments as offices or for commercial purposes prior to news reports of Representative Rangel's alleged conduct in 2008.

Various witnesses testified that there was no official policy regarding the use of rent stabilized apartments as offices or other non-residential purposes and tenants other than Representative Rangel were allowed to do so. The only written statement regarding the use of these units was the form language included in tenant leases about "living purposes." However, Rubler said, "I suspect, although don't know, that there were other apartments that were being used as offices at Lenox, but the reason I say I don't know is because I wouldn't have any way of knowing."<sup>292</sup> When asked if he would "have any reason to care," Rubler said, "No."<sup>293</sup> Rubler also told the investigative subcommittee that there may be economic reasons to allow the non-conforming use of a rent stabilized apartment.<sup>294</sup> He agreed that, "to the extent that he was paying the full legal rent on the apartment [] that was the legal rent on the apartment," there is an argument that [a landlord] had no business interest in what he was using it for."<sup>295</sup>

Lenox Terrace General Manager Darryl Rankin was also vague about Olnick's policy regarding the use of rent-stabilized apartments as an office. An Olnick representative explained the difference between incompatible use and non-conforming use – so long as the use was compatible with other tenants' uses, there was little concern about whether or not it was technically "non-conforming."<sup>296</sup> When asked if management would have allowed Representative Rangel to maintain a campaign office in apartment 10U, Rankin said, "I guess it depends ... I think it depends on is it a campaign office like this office here where people are coming in now or is it a campaign office where somebody is sitting at a desk in an empty apartment making phone calls."<sup>297</sup> Rankin believed that the latter example was permissible.<sup>298</sup>

Witnesses testified that Representative Rangel was not the only Lenox Terrace tenant to use a rent stabilized apartment as an office or a business. According to Rankin, "there's a lot of people that have [businesses in their apartments], there's people that press CDs out of their apartments, there's a DJ guy that I know has a van and he uses his apartment as a business address because it's on his cards. I think there's [sic] a lot of people that use their residences."<sup>299</sup> Rankin did not believe that running a business out of a rent-stabilized apartment was against the policies of Hampton Management.<sup>300</sup> Rankin noted that Lenox Terrace management did little to curb these activities; "I think 20, 30 years ago the landlord was more concerned about filling apartments than they cared about what the use was of the apartment. These people had rent

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<sup>292</sup> Rubler Int. Tr. 5/15/09 at 34-35.

<sup>293</sup> *Id.* at 35.

<sup>294</sup> *Id.* at 34.

<sup>295</sup> *Id.*

<sup>296</sup> Rankin Int. Tr. 5/14/09 at 70-72.

<sup>297</sup> *Id.* at 61.

<sup>298</sup> *Id.*

<sup>299</sup> Rankin Int. Tr. 5/14/09 at 64-65.

<sup>300</sup> *Id.* at 68-69.

stabilized apartments which were not located on the first floor of the building.”<sup>301</sup> Representative Rangel also recalled commercial businesses in the building other than those on the ground floor. Specifically, Representative Rangel recalled that “[o]ne was a restaurant. It had a big sign what the menu was every day. Of course, there [were] doctors and lawyers that are still there. Other people -- the doorman was passed -- anybody that was checking this out [could] ask the doorman.”<sup>302</sup> Representative Rangel testified that another tenant was operating a carry-out business in their apartment. He believed that the landlord and the doormen knew about this business because “if he ever visited, there was a sign in the public area. They didn’t hide it. You could smell what was going on.”<sup>303</sup>

e. The Evidence in the Record Demonstrates that if Olnick Allowed Representative Rangel to Use a Rent-Stabilized Units as a Business or Office, Doing so Was a Rational Business Decision Rather than Special Treatment

Even if Olnick management did know that Representative Rangel was using his rent stabilized apartment as a campaign office, the facts in the record indicate that allowing Representative Rangel’s non-conforming use was a rational business decision rather than special treatment. Former Olnick Chief Operating Officer Rubler noted the potential financial benefits of allowing a tenant to maintain a rent stabilized apartment as a non-primary residence if they could receive as much income from the current tenant as a new one.<sup>304</sup> Building manager Rankin agreed that deciding to allow a tenant to renew his rent stabilized apartment despite a non-conforming use was “a business decision.”<sup>305</sup> Although Olnick was unable to provide reliable documents related to the average vacancy rates in Lenox Terrace during the period of Representative Rangel’s tenancy, Olnick employees verified that there were large numbers of vacancies in Lenox Terrace during the relevant period. Rankin testified, “Our goal is to rent the apartments in the building. And 20 years ago when Lenox had perpetual 10, 15, 20 years ago, when they had perpetual failure to meet the cash flow to pay the bills they would lease whatever they could to whoever they could just to get the money in.”<sup>306</sup> According to Peter Soundias, who served as a painter, painter supervisor, painting manager, and currently assistant superintendent in Lenox Terrace, in 1988 approximately 80 to 100 apartments were vacant each month.<sup>307</sup> Soundias was unsure of the average number of vacancies in 1996, when Representative Rangel

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<sup>301</sup> *Id.* at 65.

<sup>302</sup> Rangel Int. Tr. at 207.

<sup>303</sup> *Id.* at 208.

<sup>304</sup> Rubler Int. Tr. 5/15/09 at 34-35.

<sup>305</sup> Rankin Int. Tr. 5/14/09 at 71-72.

<sup>306</sup> *Id.* at 75.

<sup>307</sup> Soundias Int. Tr. at 8-9.

began renting apartment 10U.<sup>308</sup> However, apartment 10U was vacant for at least four months before Representative Rangel first entered into a lease agreement to rent the unit.<sup>309</sup>

Counsel for Olnick, Robert Morvillo explained that his client did not seek to remove tenants who used their units in the manner Representative Rangel used apartment 10U. When asked if rent stabilization is for primary residence, Morvillo responded, “No, no, you’re wrong. ... it is not illegal or improper to rent for an other than primary residence point of view.”<sup>310</sup> According to Morvillo, “if the landlord discovers that [a rent stabilized apartment is] not a primary residence, the landlord under the rent stabilization law has the power but not the obligation to evict the client because it’s not a primary residence.”<sup>311</sup> There is however, “no requirement, legal requirement, that it be for a primary residence.”<sup>312</sup> If a rent stabilized unit is being used for a non-residential purpose, “the landlord can decline to rent [the unit as] a rent stabilized apartment.”<sup>313</sup> Morvillo acknowledged that “the fundamental point is rent stabilization is for primary residence, and the landlord has certain, under certain conditions leeway in which to deal with that,”<sup>314</sup> but noted that a landlord can “either accept it or you can reject it,” and given economic realities, “generally most landlords want to fill their buildings.”<sup>315</sup>

Morvillo maintained that because apartments rather than tenants are rent-stabilized, if a landlord chooses not to renew the lease of a tenant who is using their rent stabilized apartment as an office, the landlord would not be entitled to more rent by renting the unit to a tenant used the apartment as a primary residence.<sup>316</sup> Morvillo stated that from management’s perspective, “this building always had vacancies in it. It is in the economic interest of the organization to fill their vacancies. If you want to fill your vacancy with somebody that’s not going to cause a problem you have the right to do that.”<sup>317</sup> Even though a landlord may allow a tenant to rent a rent stabilized apartment and use it as an office, rather than a primary residence, “[y]ou also have the right if you don’t like what they’re doing in that apartment to evict because it’s not a primary residence.”<sup>318</sup>

Sheldon Melnitsky, managing attorney of the New York State Department of Housing and Community Renewal and deputy counsel of the New York City Downstate Office of Legal Affairs, confirmed that rational business interests may compel a landlord to allow a rent-stabilized tenant to remain in his or her apartment despite a non-conforming use.<sup>319</sup> If there are

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<sup>308</sup> *Id.* at 8.

<sup>309</sup> CSOC.CBR.00000004; CSOC.CBR.00000008.

<sup>310</sup> Rankin Int. Tr. 5/14/09 at 69-70.

<sup>311</sup> *Id.* at 70.

<sup>312</sup> *Id.*

<sup>313</sup> *Id.*

<sup>314</sup> *Id.* at 70.

<sup>315</sup> *Id.* at 70-71.

<sup>316</sup> *Id.*

<sup>317</sup> *Id.*

<sup>318</sup> *Id.*

<sup>319</sup> Garfinkle and Melnitsky Int. Tr. at 14-15.

no complaints about the tenant's conduct, the tenant pays the rent, and the landlord accepts the rent, then landlords sometimes actually allow the non-conforming use to continue.<sup>320</sup> According to Melnitsky, "a lot of times it is favorable for owners not to bring one of these cases if the rent is decent and it is a decent tenant, you know, because the alternative is the eviction of this person and a more uncertain situation afterwards."<sup>321</sup> The evidence is clear that Representative Rangel paid the maximum allowable rent under the rent-stabilization laws.

Melnitsky indicated that another business rationale for allowing a rent stabilized tenant to continue a non-conforming use was avoiding litigation in matters involving rent-stabilized apartments.<sup>322</sup> He explained to the investigative subcommittee that "[i]t takes quite a while, actually [to resolve primary residence cases]. These are heavily litigated cases within the Housing Court."<sup>323</sup> Melnitsky said he was told by "a tenant's attorney on the outside that depositions as to the various indicia of whether you live there or not can run \$10,000 and \$15,000, even before you get to Housing Court."<sup>324</sup> Despite these upfront costs, "once you get to Housing Court, it is a trial that is basically a very extensive examination of not only the intention of the tenant, but what else he is doing with his time."<sup>325</sup> This conclusion is consistent with testimony provided by Olnick employee Jennifer Filippelli regarding the length of such litigation.<sup>326</sup> Melnitsky noted "yes, once somebody goes through one of these notices, it takes an extensive period of time for actually the courts to return a determination. And they are heavily fact based."<sup>327</sup> Melnitsky advised the investigative subcommittee that landlords are "under absolutely no obligation to bring one of these cases, and if he fails to, then a tenant can remain, but he remains subject to rent-stabilization."<sup>328</sup>

2. Clause 5 of the Code of Ethics for Government Service Does Not Apply to Representative Rangel's Use of Apartment 10U as an Office
  - a. In Order to Find a Violation of Clause 5, There Must Be Evidence of An Intent to Influence A Member's Official Duties or to Conceal the Alleged Benefit

Prior Standards Committee decisions indicate that Representative Rangel's tenancy in apartment 10U does not create a violation of clause 5 of the Code of Ethics for Government Service. To prove a clause 5 violation, the evidence must show not only that a Member received a gift or thing of value, but there must also be evidence that the circumstances under which the Member accepted the thing of value would lead a reasonable person to believe that the gift

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<sup>320</sup> *Id.*

<sup>321</sup> *Id.*

<sup>322</sup> *Id.* at 12-13.

<sup>323</sup> *Id.*

<sup>324</sup> *Id.* at 13.

<sup>325</sup> *Id.*

<sup>326</sup> Interview Transcript of Jennifer Filippelli, December 8, 2008 (hereinafter Filippelli Int. Tr. 12/8/08) at 50-51.

<sup>327</sup> Garfinkle and Melnitsky Int. Tr. at 13.

<sup>328</sup> *Id.* at 14.

influenced the Member's performance of his governmental duties. Those facts have generally included some evidence of intent by the donor to use the alleged benefit to influence the recipient or some effort by the recipient to conceal the alleged gift or benefit.<sup>329</sup> For example, in the *Sikes* matter the Standards Committee found that Representative Sikes violated clause 5 related to the performance of his governmental duties in support of the First Navy Bank at the Pensacola Naval Air Station, which also resulted in substantial personal financial benefits.<sup>330</sup> Representative Sikes "approach[ed] organizers of the Bank and inquir[ed] about the possibility of purchasing stock in a bank which he had been active in his official position in establishing."<sup>331</sup> By contrast, the Standards Committee has also found that the fact that a donor has business before the House cannot, by itself, sustain a violation of clause 5 of the Code of Government Ethics.<sup>332</sup>

In *In the Matter of Mario Biaggi*, the Standards Committee found that Representative Biaggi violated clause 5 of the Code of Ethics for Government Service after he was found guilty by a jury of having accepted illegal gratuities in violation of 18 U.S.C. § 201(g).<sup>333</sup> Representative Biaggi received gifts and gratuities from Meade Esposito, an executive for an insurance brokerage firm after assisting Coastal Dry Dock and Repair Corporation (Coastal), a large client of the firm, which was experiencing financial difficulties.<sup>334</sup> In 1984, Esposito "caused the payment of Representative Biaggi's round trip air fare to St. Maarten."<sup>335</sup> In 1984 and 1985, Biaggi caused letters to be sent to the Mayor of New York City regarding Coastal and met with Coastal executives with Esposito and other elected officials on more than one occasion.<sup>336</sup> In addressing the clause 5 count of the Statement of Alleged Violation, the Committee wrote:

While the Committee does not argue, nor can it be determined, that Representative Biaggi would not have interceded on behalf of Coastal in the absence of or because of Esposito's gratuities to the congressman, it is nevertheless clear that at a minimum, an appearance is raised that such was the case.<sup>337</sup>

The illegal gratuity statute differs from the non-criminal solicitation and gift statute codified at 5 U.S.C. § 7353, in that the former is designed to prevent actual, rather than apparent, *quid pro quo* arrangements. The Supreme Court has held that a bribe or illegal gratuity is distinguishable from

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<sup>329</sup> See generally, House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. 100-506, 100th Cong., 2d Sess. at 1 (1988); see also

<sup>330</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative Robert L.F. Sikes*, H. Rep. 94-1364, 94<sup>th</sup> Cong., 2d Sess. at 3-46 (July 23, 1976).

<sup>331</sup> *Id.* at 3.

<sup>332</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson*, H. Rep. 96-930, 96th Cong., 2d Sess. at 2 (1980).

<sup>333</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. 100-506, 100th Cong., 2d Sess. at 1 (1988).

<sup>334</sup> *Id.* at 3-4.

<sup>335</sup> *Id.* at 4.

<sup>336</sup> *Id.* at 5.

<sup>337</sup> *Id.* at 9.

a “mere gift” because receipt of the thing of value relates to an official act; a gift is generally defined as “a ‘voluntary transfer’ of property, made ‘without consideration.’”<sup>338</sup> “A bribe induces an official act; an illegal gratuity rewards or seeks to elicit favorable official action; a gift has no connection to any official act.”<sup>339</sup>

The Standards Committee has also found that a Member does not violate clause 5 of the Code of Ethics for Government Service merely by “receiv[ing] gifts of substantial value from a person with a direct interest in legislation (a violation of [former] House Rule XLIII, clause 4).”<sup>340</sup> In the 1980 *Wilson* matter, the Standards Committee amended three counts of the Statement of Alleged Violation “by striking the reference to a violation of Rule 5 of the Code of Ethics for Government Service, but leaving intact references to violations of House Rule XLIII, clauses 1 and 4, by votes of 11 ayes and 0 nays.”<sup>341</sup> This decision,

resulted from the fact that the evidence failed to show that the receipts [of gifts] in fact occurred “under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.”

Indeed the original charge did not accuse Representative Wilson of in fact being influenced in his official duties, by a person interested in legislation before the Congress. It merely charged that he received gifts from such a person.<sup>342</sup>

The Standards Committee determined that Lee Rogers gave Representative Wilson a total of \$10,500 between June 1971 and December 1972 without any of the “normal indicia of a loan, such as a written loan agreement or note, interest, maturity date, [or] demand or offer of repayment.”<sup>343</sup> Based on these facts, the Standards Committee concluded that the money was not a loan, but an “improper gift.”<sup>344</sup> Mr. Rogers’ interest before the House were demonstrated by “a series of correspondence among Mr. Rogers, [his attorney], and Representative Wilson, concerning H.R. 5838, 93rd Congress, 1st Session (Committee Hearing Exhibit No. 15), and correspondence between Mr. George Gould and Mr. Rogers concerning postal rates and classification (Committee Hearing Exhibit No. 16).”<sup>345</sup> HR 5838 was introduced in the House of Representatives on March 20, 1973.<sup>346</sup> Despite the proximity in time between the payments and introduction of the bill, Representative Wilson’s conduct did not constitute a clause 5 violation.

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<sup>338</sup> 2008 *Senate Ethics Manual* at 58 (quoting Black’s Law Dictionary 688 (6th ed. 1990)).

<sup>339</sup> *United States v. Sun-Diamond Growers of California*, 526 U.S. 398 (1999).

<sup>340</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson*, H. Rep. 96-930, 96th Cong., 2d Sess. at 2 (1980).

<sup>341</sup> *Id.* at 4.

<sup>342</sup> *Id.* at 5.

<sup>343</sup> *Id.* at 4.

<sup>344</sup> *Id.*

<sup>345</sup> *Id.* at 6.

<sup>346</sup> *Id.* at 330.



This interpretation of clause 5 of the Code of Ethics for Government Service is confirmed by the Standards Committee's conduct *In the Matter of Representative John J. McFall*. The proposed facts in this case noted, that McFall "received things of value [including money] from Tongsun Park under circumstances which a reasonable person might construe as influencing the performance of his duties."<sup>347</sup> Park testified before the Standards Committee that his goal was to be a conduit for providing gifts to Members in order to influence their policies towards to the Government of Korea.<sup>348</sup> In addition, "[t]he situation is substantially aggravated by the form in which the money was handled. The money was all paid in cash. It was untraceable."<sup>349</sup> The report continues, "although both the 1972 gift of \$1,000 in cash and the 1974 gift of \$3,000 in cash were offered as a campaign contribution which would have had to be reported, McFall received each into his [congressional] office account."<sup>350</sup> These and other facts evidenced McFall's "desire to keep Park's and certain other similar contributions from public view."<sup>351</sup> While he accepted these gifts, "McFall was aware not only that Park had an interest in the rice, but also an interest in aid to Korea."<sup>352</sup> Finally, the proposed findings of fact advised, "the Committee may find that McFall knew that the receipt of large amounts of cash from Tongsun Park might have appeared to a reasonable person as being related to acts performed by McFall which helped Park." Despite the facts in the record, the Standards Committee decided, by a 4 to 7 vote, that a violation of clause 5 of the Code of Ethics for Government Service was not sustained by clear and convincing evidence.<sup>353</sup>

#### b. Olnick's Proposed Development Project

Representative Rangel's conduct related to Olnick and his use of a rent-stabilized apartment as a campaign office is not consistent with prior cases where the Standards Committee has found a Member violated clause 5 of the Code of Ethics for Government Service. Although Representative Rangel has had some contact with Olnick management in the course of conducting his official duties, none of these interactions would lead a reasonable person to believe that Representative Rangel's use of apartment 10U as a campaign office was an attempt to or did in fact "influenc[e] the performance of his governmental duties." Representative Rangel's use of apartment 10U as a campaign office did not violate any of New York's rent-stabilization laws. Representative Rangel did not get a preferential rent,<sup>354</sup> but paid the maximum rent allowable for apartment 10U after it had remained vacant for months.<sup>355</sup> The fact that Olnick

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<sup>347</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. 95-1742, 95th Cong., 2d Sess. at 24 (1978).

<sup>348</sup> House Comm. on Standards of Official Conduct, *Korean Influence Investigation*, H. Rep. 95-1817, 95th Cong., 2d Sess. at 10 (1978).

<sup>349</sup> *Id.* at 26

<sup>350</sup> *Id.*

<sup>351</sup> *Id.* at 27.

<sup>352</sup> *Id.* at 30.

<sup>353</sup> *Id.* at 4.

<sup>354</sup> Garfinkle Memo at 2. CSOC.CBR.00026908-10.

<sup>355</sup> CSOC.CBR.00000004; CSOC.CBR.00000008.

did not have a clear or consistent policy regarding the use of apartments above the first floor for non-residential purposes and allowed tenants besides Representative Rangel to engage in such conduct undermines the theory that Olnick was attempting to or did in fact influence the performance of Representative Rangel's official duties. The record is also clear that Representative Rangel did not perform any task or do any work that could be perceived as a concession to Olnick in exchange for renting apartment 10U and using it as a campaign office.

During the course of his 20 year tenancy in Lenox Terrace, Representative Rangel has attended two meetings regarding construction projects proposed by Olnick for Lenox Terrace.<sup>356</sup> Representative Rangel said that “[o]n one occasion, a person who I cannot identify represented himself to be a representative of the owner.”<sup>357</sup> This Olnick representative “asked whether he could talk with me and Jim Capel, to notify me that they had hoped in the future to put all the cars underground, put new stores up, and this fence, and upgrade the whole neighborhood. And old tenants would be able, if their view was blocked, they would be able to move.”<sup>358</sup> Representative Rangel indicated “I don’t think much progress has been made on that” because of opposition by the tenants’ association.<sup>359</sup> According to Representative Rangel, the purpose of the meeting was to notify him of their proposed measures, “as they said they were notifying other tenants so they could get support. But no one ever asked me for my support, and nothing has ever been done. And it wasn’t ‘Congressman,’ it was ‘the tenant.’”<sup>360</sup> The meeting was about five or ten minutes; Representative Rangel said, “I wouldn’t know the guy if my life depended on it.”<sup>361</sup>

Former Olnick Chief Operating Officer Neil Rubler told the investigative subcommittee that he met with Representative Rangel “on a couple of occasions” in his Congressional office to discuss a proposed redevelopment of the Lenox Terrace buildings.<sup>362</sup> These meetings took place in Representative Rangel’s congressional district office on 125<sup>th</sup> Street in Harlem, NY, not in Representative Rangel’s campaign office in apartment 10U.<sup>363</sup> Representative Rangel “was one of a variety of community leaders that we met with to basically gauge opinion and build support for the proposal.”<sup>364</sup> The proposal was to “redevelop areas of the property that are now being utilized now for the most part as single story retail and instead to improve them with a combination of retail and additional apartments, you know.”<sup>365</sup> Although Rubler said that he wanted Representative Rangel to do “[n]othing in particular,” he noted that Representative Rangel was part of a “laundry list” of “influential ... people with whom we met, both to get their

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<sup>356</sup> Rangel Int. Tr. at 213-14.

<sup>357</sup> *Id.* at 214.

<sup>358</sup> *Id.*

<sup>359</sup> *Id.*

<sup>360</sup> *Id.* at 214-15.

<sup>361</sup> *Id.* at 215.

<sup>362</sup> Rubler Int. Tr. 7/14/09 at 5.

<sup>363</sup> *Id.*

<sup>364</sup> *Id.* at 5-6.

<sup>365</sup> *Id.* at 6.

feedback about what they liked and didn't like about the proposal, and to hopefully convince them that it was in the best interest of the community."<sup>366</sup> Rubler recalled meeting with Representative Rangel twice, "years ago ... once he was certainly there, once I don't know that he did more than just pop his head in to say hello."<sup>367</sup> Rubler told the investigative subcommittee he thought Representative Rangel "liked" their plan; he "just generally smiled and indicated that he liked it and there wasn't -- he certainly didn't offer an expansive opinion one way or another. And it was a brief meeting ... So there wasn't a huge amount to respond to."<sup>368</sup>

The record here indicates that although Representative Rangel met with Olnick twice about a development project, he was not asked to do anything in support of the project, did not offer to do anything in support of the project and there is no evidence that Representative Rangel had the capacity to assist in the development project at all. There are no facts in the record that Olnick representatives exploited Representative Rangel's use of apartment 10U as a campaign office to gain favor with him at any point during his tenancy in the unit. Representative Rangel's meetings with Olnick representatives regarding the potential development of Lenox Terrace do not appear to have been aimed at influencing the performance of his governmental duties; Olnick did not make any requests regarding federal legislation or any other task under his purview. There is also no indication that Olnick's representatives in the meetings mentioned Representative Rangel's tenancy in apartment 10U during the meetings. Furthermore, although he would eventually move out of apartment 10U under increased media scrutiny, there is no evidence that Representative Rangel attempted to conceal his use of apartment 10U as a campaign office from his landlord or the public. Representative Rangel paid his rent for apartment 10U using campaign checks and his campaign staff moved freely in and out of the Lenox Terrace complex. As such, the factors that have generally led the Standards Committee to find a violation of clause 5 of the Code of Ethics for Government Service are not present.

c. Representative Rangel's Constituent Work Related to Lenox Terrace

Representative Rangel's District Director, James Capel, was familiar with primary residency issues in rent-stabilized apartments in part because of his work resolving some constituent issues related to primary residency.<sup>369</sup> Capel had occasion to interact with Lenox Terrace General Manager Darryl Rankin because tenants were discussing going on strike.<sup>370</sup> Capel indicated that Rankin was "aggressive" compared to his predecessor Harold Griffel regarding evictions and other policies.<sup>371</sup> Capel noted that he didn't speak with Rankin "on a regular basis" but may have spoken to him regarding the proposed strike.<sup>372</sup> Tenants wanted "to

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<sup>366</sup> *Id.*

<sup>367</sup> *Id.* at 7.

<sup>368</sup> *Id.* at 8.

<sup>369</sup> Interview of James Capel, July 30, 2009 (hereinafter Capel Int. Tr. 7/30/09) at 36-39.

<sup>370</sup> *Id.* at 50-51.

<sup>371</sup> *Id.* at 64.

<sup>372</sup> *Id.* at 50.

try to influence the action of the owner or the management if they thought some actions were not being done in a way they thought it should be done. It could for a lot of different things. It could be for just disrespect.”<sup>373</sup>

Based on these facts, there is not sufficient evidence to lead a reasonable person to believe that Representative Rangel’s use of apartment 10U as a campaign office was an attempt to or did in fact “influenc[e] the performance of his governmental duties.” There is no evidence in the record regarding the specifics of the interactions between Capel and Rankin other than a discussion of tenants’ rights when the tenants considered a rent strike. There is also no evidence that Representative Rangel was directly involved in any of these communications or that either Capel or Rankin made any requests or suggestions for official action. Without any such evidence, a reasonable person cannot conclude that there is a substantial reason to believe that either Representative Rangel or Capel was influenced in the performance of his governmental duties, nor can this count of the Statement of Alleged Violation be sustained by clear and convincing evidence at trial.

### 3. Representative Rangel’s Use of Apartment 10U as a Campaign Office Should Not Result in a Violation of House Rules or Any other Applicable Standards

Representative Rangel’s conduct related to his tenancy in Lenox Terrace should not be a matter before the Standards Committee. The evidence in the record indicates that Representative Rangel was paying the maximum rent allowable under New York’s rent-stabilization code. Although Representative Rangel’s use of a rent-stabilized apartment as a campaign office may be politically embarrassing, his conduct did not violate any of New York’s rent-stabilization laws. This conclusion is based in large part on the testimony of New York Department of Housing and Community Renewal attorneys who stated that Mr. Rangel’s conduct was not illegal. If there was any appearance problem at all, it was one caused by the public’s understandable confusion about whether Representative Rangel’s use of apartment 10U as a campaign office violated the rent-stabilization laws. Such confusion is unsurprising given the complexity of the Rent Stabilization Code. The testimony offered by Olnick representatives as well as an attorney from the New York State Division of Housing and Community Renewal indicate that a technically non-conforming use was not illegal; the landlord was just not obligated by law to renew the lease. The decision to renew the lease for such a tenant was up to the landlord. In this case, Olnick was receiving the maximum rent allowable for apartment 10U under the rent-stabilization code, a unit which had been vacant for several months prior to Representative Rangel’s tenancy.

The Court of Appeals of New York described the Rent Stabilization Code in this way:

The patchwork of rent-control legislation in recent years has created an impenetrable thicket, confusing not only to laymen but to lawyers. Most

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<sup>373</sup> *Id.* at 51.

important, under legitimate political pressures and the stress of economic and social tensions, the rational resolution of policy considerations vital to the well-being of the people in the City of New York have been handled on a day-to-day basis, and often by temporary makeshifts. As a consequence, the legislation contains serious gaps, not readily filled by interpretation based on intention, because there was none, or even by judicial construction to make reasonable and workable schemes that are self-abortive as designed. There is a limit to which courts may or should go in rectifying such statutory gaps. Because of the significant policies involved, they should be resolved by legislative action at the local or State level.<sup>374</sup>

Members of Congress may face negative public relations implications whenever they engage in any number of everyday activities such as purchasing a foreign car, or selecting a private school for their children. Private commercial transactions where a Member pays the market value<sup>375</sup> or commercially reasonable<sup>376</sup> terms without discount should not invite scrutiny from the Standards Committee. Here, Representative Rangel paid the highest rent allowed under the law for apartment 10U.<sup>377</sup> If Members can come under the scrutiny of the Standards Committee for such politically embarrassing foibles, then every Member will be susceptible to having their good name slandered despite no evidence of wrongdoing such as in cases when a Member purchases an automobile or a home at a price that is below the “sticker price.”

New York DHCR’s attorney and Bureau Chief confirmed that even today, the Rent Stabilization Code is still “a complicated statute. The statutes have been described by our own Court of Appeals [as] three times as an impenetrable thicket confusing to both lawyers and landlords.”<sup>378</sup> Olnick’s lack of a coherent policy regarding non-conforming uses and the Lenox Terrace employees’ ignorance about whether using a rent-stabilized apartment for commercial purposes is a clear example of this confusion. When Representative Rangel wanted to move his campaign office to another apartment in the Lenox Terrace complex because apartment 10U was too small and had a faulty air conditioning system, the building staff showed his campaign staff apartment 10K and began discussions about signing a lease agreement.<sup>379</sup> Olnick management only became concerned about Representative Rangel’s non-conforming use of apartment 10U after receiving negative press coverage for a rational business decision that experts agree other landlords make on a regular basis. Representative Rangel’s use of apartment 10U as a campaign office did not implicate any of the ethical guidelines related to the performance of his

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<sup>374</sup> *89 Christopher, Inc. v. Joy*, 318 N.E.2d 776, 780 (N.Y. 1974).

<sup>375</sup> House Rule XXV, cl. 5(a)(3)(A); see 2008 *House Ethics Manual* at 38.

<sup>376</sup> 2008 *House Ethics Manual* at 68.

<sup>377</sup> Interview Transcript of Jennifer Filippelli, November 21, 2008 (hereinafter Filippelli Int. Tr. 11/21/08) at 26; Garfinkle Memo at 2. CSOC.CBR.00026908-10.

<sup>378</sup> Garfinkle and Melnitsky Int. Tr. at 7.

<sup>379</sup> Swett Int. Tr. at 42-43.

governmental duties. There is no evidence in the record that Representative Rangel provided any benefits to Olnick or that Olnick used his tenancy in apartment 10U to gain any benefits. The adjudicatory subcommittee should find that any alleged violation of House Rules and other applicable standards arising from Representative Rangel's use of apartment 10U cannot be sustained by clear and convincing evidence.

#### D. Duplicative and Unnecessary Counts in the Statement of Alleged Violation

There are several counts in the Statement of Alleged Violation that are duplicative of other counts and the narrative in the Statement of Alleged Violation incorrectly suggests that Representative Rangel's conduct in this matter was corrupt. Specifically, Count XI of the Statement of Alleged Violation is superfluous because it does not refer to any separate substantive violations of House Rules or other applicable standards. Each actual or potential substantive violation arising from Representative Rangel's conduct listed in the Statement of Alleged Violation is by definition a failure to "[u]phold the Constitution, laws, and legal regulations of the United States."<sup>380</sup> Likewise, Count XII of the Statement of Alleged Violation is an unnecessary addition already reflected in the substantive counts. House Rule XXIII, clause 2 states, "A Member ... of the House shall adhere to the spirit and the letter of the Rules of the House and to the rules of duly constituted committees thereof." The House Ethics Manual states:

With regard to the applicable provisions of the House rules, Members and staff should bear in mind that under House Rule [XXIII], clause 2 they are obligated to adhere to not only the letter, but also the spirit of those rules. This provision has been interpreted to mean that Members and staff may not do indirectly what they are barred from doing directly.<sup>381</sup>

This rule is designed to prevent Members from relying on a "narrow" interpretation of a House Rule in order to escape responsibility for violating the stated purpose of the provision. This interpretation is confirmed by the fact that "spirit" is listed before "letter" in the rule; violations of the "letter" of House Rules are enforced pursuant to the specific rule violated. Here, Representative Rangel has not violated the spirit of the rules; he has violated the letter of House Rules in the various counts related to his efforts on behalf of CCNY and his various errors and omissions on Financial Disclosure statements and tax forms. Those allegations are not predicated on violating the "purpose" of applicable standards, thus making Count XII of the Statement of Alleged Violation unnecessary and duplicative. The "spirit" rule should not be used to absolve Committee counsel from meeting their burden to prove the "letter" of a charged offense.

The investigative subcommittee's Statement of Alleged Violation also discusses conduct which did not amount to substantive violations of House ethical rules beyond the basic disclosure rules already discussed above. Representative Rangel's service on the board of the Ann S. Kheel

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<sup>380</sup> Code of Ethics for Government Service (72 Stat., Part 2, B12 (1958), H.Con. R. 175, 85th Cong.).

<sup>381</sup> 2008 *House Ethics Manual* at 122.

Charitable Trust (“Kheel Trust”) and his ownership interest in the development in Punta Cana, Dominican Republic, are unrelated to any of his legislative work. The evidence in the record does not indicate that Representative Rangel sought, secured or offered any improper benefits to or from the Kheel Trust or related to the Punta Cana resort. However, the investigative subcommittee’s decision to address these issues in the Statement of Alleged Violation creates an impression that Representative Rangel may have had a conflict of interest or committed some other impropriety when the investigative subcommittee made no such finding. The investigative subcommittee should have taken greater care to exclude matters from its Statement of Alleged Violation that were not at the heart of the substantive allegations but could prove politically damaging or embarrassing to a Member who is under its jurisdiction.

The duplicative counts as well as the general narrative of the Statement of Alleged Violation and other now public investigative subcommittee documents create an erroneous impression that Representative Rangel’s conduct was corrupt. For example, despite the fact that the investigative subcommittee made no finding that Representative Rangel violated the self-dealing statute or any other obligations related to the Kheel Trust’s grant to create the Ann S. Kheel Scholarships at CCNY, the Statement of Alleged Violation and other public documents suggest that the Internal Revenue Service may find that Representative Rangel violated the self-dealing statute. The Kheel Trust’s Trust Agreement requires trustees to comply with the same statute.<sup>382</sup> Representative Rangel did not violate the self-dealing statute or any other applicable standards related to his service as a trustee for the Kheel Trust. The record demonstrates that the idea for the Ann S. Kheel Scholars program predated any conversations about the Rangel Center with CCNY or Trust officials. During 2004, months before Representative Rangel’s communications with CCNY President Gregory Williams about the Rangel Center, the Kheel trustees made plans to create an Ann S. Kheel Scholarship program for disadvantaged students at the City University of New York and the New York Urban League.<sup>383</sup> In December 2004, President Williams sent Representative Rangel a letter thanking him for the “opportunity to submit a proposal to the Ann S. Kheel Charitable Trust to create the Ann S. Kheel Scholars Program” at CCNY.<sup>384</sup> Months later, Representative Rangel also wrote his fellow Kheel Trust trustees at their home addresses and suggested that they maintain their relationship with CCNY by donating to the Rangel Center.<sup>385</sup> Representative Rangel fully disclosed to his colleagues that his name was attached to the Rangel Center before they voted to make another donation to CCNY for the Rangel Center.<sup>386</sup> Even if the Ann S. Kheel Scholars program later became a part of the Rangel Center, neither donation constitutes a violation of the self-dealing statute or the Kheel Trust Trust Agreement because Representative Rangel did not receive any direct benefits as a result of the donation.

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<sup>382</sup> See 26 U.S.C. § 4941; CSOC.CBR.00009867, 9869.

<sup>383</sup> CSOC.CBR.00009628-29; CSOC.CBR.00009636-38; CSOC.CBR.00009647-48.

<sup>384</sup> CSOC.CBR.00009592-05.

<sup>385</sup> CSOC.CBR.00003633 (letter to Gabe Pressman); CSOC.CBR.00003637 (letter to Veronica Kelly); CSOC.CBR.00003639 (letter to Luis Alvarez Vila).

<sup>386</sup> CSOC.CBR.00009668; CSOC.CBR.00009691.

The investigative subcommittee ignores clear precedent in order to suggest that Representative Rangel's conduct related to the Kheel Trust was corrupt and violated the self-dealing statute. The regulations regarding self-dealing explain, "[t]he fact that a disqualified person receives only an incidental or tenuous benefit from the transaction will not, by itself, make such use an act of self-dealing."<sup>387</sup> Guidance from the Internal Revenue Service (IRS) addresses the exact factual situation here; in a revenue ruling, the IRS allowed a foundation to make a grant to a charity contingent upon changing the name of the charity to that of the foundation's founder.<sup>388</sup> The public recognition the disqualified person received from the charitable act and the renaming of the charity, were considered "incidental" benefits under the regulations.<sup>389</sup> Here, although the Rangel Center is obviously named for Representative Rangel, that benefit is "incidental" and permissible under the self-dealing statute and applicable regulations. This interpretation is consistent with the Standards Committee's own guidance which allows Members "to lend their names to legitimate charitable enterprises and otherwise promote charitable goals,"<sup>390</sup> such as providing educational opportunities to disadvantaged minority youth.

The investigative subcommittee also misinterprets CCNY's decision to employ an archivist to organize and assist visitors in reviewing Representative Rangel's donated congressional papers as some type of benefit to him. This conclusion is inconsistent with any common or plain meaning of the words "gift" or "benefit." Representative Rangel's donated papers are for the benefit of CCNY and the Rangel Center's students and guests. Likewise, staff hired to facilitate that process do not provide any benefit to Representative Rangel. Representative Rangel's conduct related to the Kheel Trust was not corrupt and did not violate the self-dealing statute. This fact is confirmed by the investigative subcommittee's inability to find a violation. However, the narrative in the Statement of Alleged Violation attempts to convert Representative Rangel's efforts to secure donations from the Kheel Trust to CCNY on behalf of disadvantaged youth into a corrupt violation of the law. That conclusion cannot be supported by the evidence in the record or the applicable legal standards.

The investigative subcommittee also did not find that Representative Rangel violated either the bribery or illegal gratuities statute. There was no evidence in the record that Representative Rangel was engaged in a *quid pro quo* relationship with Nabors Industries or Nabors Industries CEO Eugene Isenberg. Likewise, the investigative subcommittee did not find that Representative Rangel entered into a *quid pro quo* relationship with any foundation that donated to CCNY for the Rangel Center or with those foundation's parent companies. Representative Rangel has stated that he did not follow the congressional solicitation rules in his efforts to assist CCNY, but these failures were not corrupt.

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<sup>387</sup> 26 C.F.R. § 53.4941(d)-2(f)(2).

<sup>388</sup> Rev. Rul. 73-407, 1973-2 C.B. 383.

<sup>389</sup> *Id.*

<sup>390</sup> H. Rep. 337, 104th Cong., 1st Sess. 12 (1995); see 2008 *House Ethics Manual* at 44.



While Representative Rangel engaged in serious and irresponsible conduct that violated House Rules and other applicable standards, none of his conduct was done intentionally to circumvent the ethical guidelines or to use his official position for personal financial gain. The investigative subcommittee should have made this fact sufficiently clear in its now public Statement of Alleged Violation or transmittal letter to the full Standards Committee. In denying a Member's motion to dismiss, the Standards Committee wrote:

The Committee, unlike a jury in a court of law, can strike any part of a particular count which has not been proven by the evidence ... [The Committee combined separate standards into various counts] fully cognizant of the potentially devastating impact of any Statement of Alleged Violations, to spare respondent the added embarrassment of an extremely large number of counts.<sup>391</sup>

The counts in the Statement of Alleged Violation against Representative Rangel do not reflect due consideration of the "devastating impact" of a Statement of Alleged Violation or the "embarrassment" of the voluminous counts contained therein.<sup>392</sup> As noted, Counts XI and XII of the Statement of Alleged Violation do not refer to any substantive counts that Representative Rangel has not already been alleged to have committed. Furthermore, the Statement of Alleged Violation accuses Representative Rangel of violating the criminal Franking statute when that charge simply cannot be sustained by the facts in the record despite also including Count IV: Conduct in Violation of Postal Service Laws and Franking Commission Regulations which clearly apply to Representative Rangel's conduct. Members of Congress must adhere to the "highest" moral and ethical principles. However, those moral and ethical principles must be applied fairly and uniformly to all Members, including Representative Rangel.

#### IV. Conclusion

I agree with my colleagues that Representative Rangel engaged in conduct that violated various House Rules and other applicable standards of conduct. Representative Rangel's conduct related to CCNY's Rangel Center all resulted from *one* mistake – it was not allowable as a part of his official duties. Based on that one mistake, Representative Rangel violated the congressional solicitation rules, Franking Commission regulations, House Office Building Commission regulations, the purpose law, the Member's Congressional Handbook, and the letterhead rule. Representative Rangel's failures to provide a "full and complete statement" of his income, unearned income transactions and reportable positions constitute violations of the Ethics in Government Act and House Rule XXVI. I also agree with my colleagues that the scope and totality of Representative Rangel's conduct, as well as his leadership position on the House

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<sup>391</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson*, H. Rep. 96-930, 96<sup>th</sup> Cong., 2d Sess. at 53 (1980).

<sup>392</sup> *Id.*

Committee on Ways and Means during the relevant period, lead these violations to constitute behavior which fails to “reflect creditably on the House.”<sup>393</sup>

Despite Representative Rangel’s serious conduct, I disagree that a reprimand is an appropriate sanction in this matter. Representative Rangel’s conduct did not involve corruption, personal financial gain, an abuse of power, or disregard of clear precedent, the factors that have characterized prior cases where the Standards Committee has recommended or the House of Representatives has voted to impose a reprimand. Representative Rangel’s conduct is more consistent with cases where a Member has been sanctioned with a public letter of reproof. When Members omit information from their Financial Disclosure statements, they are usually allowed to amend these forms with no sanction. The amount of money and the number of errors involved with Representative Rangel’s Financial Disclosure statements, however, require the Standards Committee to respond; a letter of reproof is the appropriate response. Standards Committee precedents direct the Committee to consider the numerous mitigating factors that speak to the appropriateness of the sanction of a letter of reproof, including the absence of any evidence of an improper intent on the part of Representative Rangel to conceal any of the subject conduct at any point during its commission or the investigative subcommittee’s work, his honest, but mistaken understanding of the rules related to his solicitations on behalf of CCNY and the lack of any evidence that Representative Rangel used his official position to obtain personal financial benefits. The Committee should also consider that Representative Rangel has already submitted to a significant sanction by relinquishing his position as Chairman of the House Committee on Ways and Means as a result of this pending investigation and the Standards Committee’s admonishment of his conduct in another matter, a sanction virtually without precedent in the absence of a pending indictment or formal public criminal investigation.

Finally, I believe that the evidence in this case does not create even a “substantial reason to believe” that Representative Rangel committed several counts of the Statement of Alleged Violation including allegations that Representative Rangel violated the House gift rule, clause 5 of the Code of Ethics for Government Service or the criminal Franking statute. Several of the counts included in the now publicly available Statement of Alleged Violation should not have been charged because they were duplicative of other counts or lacked sufficient evidence to be charged. As such, the Statement of Alleged Violation will have an unnecessarily “devastating impact” on and cause undue “embarrassment” to Representative Rangel.<sup>394</sup> The investigative subcommittee’s insistence upon including alleged violations suggesting corruption and involving criminal conduct understandably hindered the prompt resolution of this matter. Despite this fact, I have concluded that Representative Rangel’s conduct in this matter constituted violations of applicable ethical standards, did not reflect creditably on the House of Representatives and merits a letter of reproof, but not a reprimand.

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<sup>393</sup> House Rule XXIII, cl. 1.

<sup>394</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson*, H. Rep. 96-930, 96<sup>th</sup> Cong., 2d Sess. at 53 (1980).

## Congressman Dent Motion for Summary Judgment Questions

**Campaign Office in Rent Stabilized, Residential Unit/Appearance of Impropriety For Blake:** On p. 74 of your Summary Judgment Motion, you state that "the evidence in the record makes clear that the Respondent accepted a favor or benefit in the form of leasing a residential, rent-stabilized apartment for his campaign office, and this violated the terms of his lease, New York City Zoning regulations, the New York City building code, and the certificate of occupancy for Lenox Terrace.

Q: Can you describe more specifically the zoning and building regulations that were violated by Mr. Rangel's use of a campaign office in a residential building? What is significant in the Lenox Terrace building about commercial units above the first floor?

Q: Can you please put up Exhibit 508—a copy of the original lease for the apartment 10U Rep. Rangel signed for his campaign office? On the first page, 'Charles Rangel' is typed as the tenant, and paragraph 1 states the tenant "shall use the apartment for living purposes only, and could only be occupied by either the tenant named in the lease or by the tenant's immediate family.

Q: Can you put up Exhibit 530—a copy of a rental application form. Did the evidence and testimony confirm that this application form was used for the campaign office unit? I note that the person named on the line to occupy the unit is "Steven Rangel," Mr. Rangel's son. Is there any evidence that Mr. Rangel's son ever lived in the unit?

### For Rangel:

Q: Do you dispute that you never used apartment 10U as a residence, even though the lease and zoning regulations required it to be a residential unit?

Q: Do you dispute Committee counsel's evidence on p. 50 of their Motion that your District Director assisted constituents on issues relating to their residency in the Lenox Terrace building at the same time you were not in compliance with the residency provisions of your lease of 10U?

Q: Why did your campaign office seek to move out of Lenox Terrace building in July 2008, as Exhibit 536 states, "because of events"?

Q: Is your campaign office now located in a residential or rent-stabilized unit? Is it your understanding that you could rent a residential apartment again in a New York building for a campaign office now if you wanted to? If not, why not?

***"Special Handling Tenant List"***

**For Rangel**

Q: Please pull up Exhibit 536--a copy of a Statement issued by you or your office on July 16, 2008. In the 7<sup>th</sup> paragraph, you state that "for all [your] years at Lenox Terrace, you "have not been treated different from any other tenant living in a stabilized apartment."

Could you please pull up Exhibit 519?

Q: Do you recognize the individuals on this list? Do you believe you or any of the other individuals on the list have been treated differently than other tenants in the building?

Q: Are you aware of other tenants in Lenox Terrace above the first floor who have been allowed to rent residential, rent stabilized units for commercial purposes?

Q: Do you dispute the evidence presented by Committee counsel on p. 49 of their Motion that "special handling tenants received courtesies that other tenants did not receive, including favorable treatment regarding non-payment of rent? Did you receive such a courtesy at any time during your tenancy?

***Meeting with Lenox Terrace executives regarding redevelopment***

**For Rangel** :

Q: Committee counsel's cited on p. 49 of their Motion, your testimony that you met with a representative of the Olnick Corporation that owns the Lenox Terrace building to discuss their proposed redevelopment of the Lenox Terrace buildings at the time you lived in one of the buildings.

# U.S. House of Representatives

COMMITTEE ON STANDARDS OF  
OFFICIAL CONDUCT

Washington, DC 20515

March 17, 2009

Mr. Phu Huynh  
Oldaker, Belair & Wittie, LLP  
818 Connecticut Avenue, NW  
Suite 100  
Washington, DC 20006

Dear Mr. Huynh:

This responds to your letters of January 14, February 26 and March 6, 2009 on behalf of Congressman Charles Rangel, seeking guidance on whether Congressman Rangel may use funds from his principal campaign committee to pay certain legal expenses for himself as well as legal expenses for certain current and former members of his personal staff, campaign staff, and Ways & Means committee staff in connection with an ongoing Committee on Standards investigation into certain conduct related to his official duties. The Committee has long advised Members to consult with the Committee prior to using campaign funds for legal expenses to ensure that the legal services are ones that the Member may properly pay with campaign funds.

***Question 1: May Congressman Rangel use campaign funds to pay legal expenses incurred related to two additional matters under Committee investigation?***

As you know, on September 26, 2008 the Committee approved Congressman Rangel's use of campaign funds for his own legal expenses in connection with three matters:

1. A Committee investigation regarding the use of Congressional letterhead with regard to the Charles B. Rangel Center for Public Service at the City College of New York;
2. A Committee investigation and an FEC review of allegations with respect to certain apartment units that Congressman Rangel leased for personal and campaign use; and
3. A Committee investigation into past House Financial Disclosure statements regarding the income earned through investment in a guest unit at the Punta Cana Yacht Club in the Dominican Republic and related federal and state income tax authority matters.

Your March 6, 2008 letter attached two public statements from the Committee regarding the areas of investigation into Congressman Rangel's official duties. Specifically, your letter now asks the Committee to approve Congressman Rangel's use of principal campaign committee funds for

Mr. Phu Huynh  
March 17, 2009  
Page 2

his legal expenses related to the following two additional areas of inquiry which were not included in the Committee's September 26, 2008 approval letter:

1. A Committee investigation into Congressman Rangel's compliance with Committee on House Administration Rules regarding storage of a vehicle in a House garage, lot, or designated parking area; and
2. A Committee investigation regarding Congressman Rangel's conduct with regard to contributions of money or pledges of contributions of money to the Charles B. Rangel Center for Public Service at the City College of New York from any person or entity associated with Nabors Industries.

The provision relevant to your inquiry is House Rule 23, clause 6, which provides as follows:

A Member, Delegate, or Resident Commissioner—

- (a) shall keep his campaign funds separate from his personal funds;
- (b) may not convert campaign funds to personal use in excess of an amount representing reimbursement for legitimate and verifiable campaign expenditures; and
- (c) except as provided in clause 1(b) of rule XXIV, may not expend funds from his campaign account that are not attributable to bona fide campaign or political purposes.

While the rule permits the use of campaign funds for "bona fide campaign or political purposes," it does not define that phrase. The Committee has long advised that Members have wide discretion to determine whether any particular expenditure would serve such purposes, provided that the Member does not convert campaign funds to personal or official uses (other than as permitted by House Rule 24, clause 1(b)). Put another way, the rule is not interpreted "to limit the use of campaign funds strictly to a Member's reelection campaign," but instead is interpreted "broadly to encompass the traditional politically-related activities of Members of Congress."<sup>1</sup>

In accordance with these principles, the Committee has determined that it is generally permissible under House rules for a Member to use campaign funds to pay for the Member's own legal fees that arise in connection with the Member's campaign, election, or the performance of official duties. The basis for this determination is that the protection of a Member's presumption of innocence in such actions is a valid political purpose.<sup>2</sup>

Based on the information provided, we conclude that it is within Congressman Rangel's discretion to use his campaign funds for his legal expenses arising from both the additional areas of

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<sup>1</sup> House Select Comm. on Ethics, *Final Report*, H. Rep. 95-1837, 95<sup>th</sup> Cong., 2d Sess. (1979) at 16.

<sup>2</sup> See 2008 House Ethics Manual at 154.

Mr. Phu Huynh  
March 17, 2009  
Page 3

inquiry included in your March 6, 2009 letter.<sup>3</sup> The Committee investigation of Congressman Rangel's compliance with applicable parking rules of the House arose in connection with the performance of Congressman Rangel's official duties. Similarly, the Committee investigation of Congressman Rangel's conduct with regard to the solicitations for the City College of New York is linked to the rules regarding use of official resources and rules of conduct based on Congressman Rangel's official position. This authority extends to expenditure of funds from Congressman Rangel's principal campaign committee for his own legal expenses resulting from the current review of these two matters by the Committee.

***Question 2: May Congressman Rangel use campaign funds to pay legal expenses incurred by members of his staff in connection with the ongoing Committee investigation?***

For the reasons set forth below, we conclude that, as a general matter, Congressman Rangel may use funds from his principal campaign committee to pay legal expenses incurred by certain current and former members of his personal staff, campaign staff, and Ways & Means committee staff in connection with the ongoing Committee investigation. We emphasize, however, as set forth in more detail below, that any such use of campaign funds to pay such expenses may implicate a number of House rules and standards of conduct, and Congressman Rangel should keep those rules and standards in mind as he considers whether to pay such expenses.

General Principles Applicable to Payment of Staff Legal Expenses. The Committee routinely advises Members to avoid situations that may cause the appearance of impropriety. See House Rule 23, cl. 1 (requiring the conduct of a Member at all times to reflect creditably on the House). Depending on the circumstances presented, an appearance of impropriety may arise from using campaign funds to pay the legal expenses of congressional staff.

Specifically, the payment of staff legal expenses may be perceived as an action that may influence the testimony or cooperation of the staff involved. This concern is heightened if the Member is in the position to consider the Member's own legal situation when making determinations as to (1) which staff would have their legal expenses paid, and (2) the amount and nature of the legal expenses eligible for reimbursement.

It is not possible to set forth all of the circumstances that may bear on the propriety of payment of staff legal expenses in any specific context. However, based on the representations in your letters and phone conversations with Committee counsel, we have identified a number of facts that we conclude are material in addressing this concern and determining whether Congressman Rangel's payment of staff legal fees serves a "bona fide campaign or political purpose" under House Rule 23. You have represented the following conditions to be true:

1. Any staff member who wishes to seek reimbursement is free to choose their own counsel without influence from Congressman Rangel or his counsel;

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<sup>3</sup> This analysis does not in any way affect the Committee's review of the merits of the underlying matters that are the subject of your request for use of campaign funds for legal expenses. The Committee will respond to those issues separately.

Mr. Phu Huynh  
March 17, 2009  
Page 4

2. Legal fees will be paid for all staff who request reimbursement of legal fees, regardless of their choice of legal counsel; and
3. Neither Congressman Rangel nor his counsel will choose among staffers as to who is entitled to payment of fees, or as to what fees should be paid.

Payment of Legal Expenses with Campaign Funds. As discussed above, the use of campaign funds by House Members is governed by House Rule 23, clause 6 of the Code of Official Conduct.

The Committee has already interviewed current and former staff from Congressman Rangel's Washington D.C. office, district office, campaign office, and the Ways & Means Committee in connection with the Committee investigation described above. Your March 6, 2009 letter makes it clear that Congressman Rangel is seeking Committee approval for the use of his campaign funds to pay legal expenses for staff in connection with all five areas of inquiry in the Committee investigation for which the Committee has approved Congressman Rangel's use of campaign funds for his own legal expenses. The Committee concludes, consistent with our approvals regarding Congressman Rangel's own legal expenses, that any relevant knowledge Congressman Rangel's staff may have regarding the subject of the Committee investigation in these five areas of inquiry results exclusively from his position and conduct as a Member. Therefore, Congressman Rangel's payment of legal expenses for members of his staff could properly be considered connected to his official duties and could also serve a valid political purpose with regard to Congressman Rangel's cooperation with the Committee's investigation.

We therefore conclude that it is within Congressman Rangel's discretion to use campaign funds to pay the legal fees in connection with the Committee investigation into the five investigative points noted above for involved staff, subject to the representations in your letter that the staff's ability to choose their own counsel and that reimbursement for staff expenses will be made to all who request such payment regardless of their choice of counsel. In addition to the factual representations made in your letters regarding the conditions that have already been imposed, we recommend that Congressman Rangel identify the names of the staff members whose legal expenses are paid from campaign funds in FEC filings disclosing the fact of such payments. Lastly, Congressman Rangel must promptly notify the Committee if he stops paying all or part of staff legal expenses and explain the reasons for that decision.

\* \* \*

Pursuant to the Federal Election Campaign Act, the FEC administers a separate set of restrictions on the use of campaign funds. Because we understand that the FEC has not squarely addressed the question you present, we strongly encourage Congressman Rangel to consult with the FEC to determine whether the proposed payment of staff legal expenses under the conditions described in this letter is permissible under all applicable FEC laws and regulations.



Mr. Phu Huynh  
March 17, 2009  
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If you have any further questions, please contact the Committee's Office of Advice and Education at extension 5-7103.

Sincerely,



Zoe Lofgren  
Chair

ZLJB:pgp



Jo Bonner  
Ranking Republican Member

ZOE LOFGREN, CALIFORNIA  
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CHIEF COUNSEL AND STAFF DIRECTOR

ONE HUNDRED ELEVENTH CONGRESS

## U.S. House of Representatives

COMMITTEE ON STANDARDS OF  
OFFICIAL CONDUCT

Washington, DC 20515-6328

JO BONNER, ALABAMA  
RANKING REPUBLICAN MEMBER

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CHARLES W. DENT, PENNSYLVANIA  
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TODD UNGERECHT  
COUNSEL TO THE RANKING  
REPUBLICAN MEMBER

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

October 8, 2009

Mr. Phu Huynh  
Oldaker, Biden & Belair, LLP  
818 Connecticut Avenue, NW  
Suite 100  
Washington, DC 20006

Dear Mr. Huynh:

This responds to your September 18, 2009, letter on behalf of Representative Charles Rangel seeking guidance on whether Representative Rangel may use funds from his principal campaign committee to pay certain legal expenses for himself as well as legal expenses for certain current and former members of his personal staff in connection with an investigation by the Committee on Standards of Official Conduct of privately-sponsored, officially-connected travel by Members of Congress, including Representative Rangel, to two conferences hosted by Carib News/Carib News Foundation during 2007 and 2008. The Committee has long advised Members to consult with the Committee prior to using campaign funds for legal expenses to ensure that the legal services are ones that the Member may properly pay with campaign funds.

***Question 1: May Representative Rangel use campaign funds to pay his own legal expenses incurred related to the Committee Investigation of the Carib News/Carib News Foundation 2007 and 2008 Conferences?***

As you know, on September 26, 2008, and March 17, 2009, the Committee approved Representative Rangel's use of campaign funds for his own legal expenses in connection with five matters currently under Committee investigation. Your September 18, 2009, letter identifies a new and unrelated Committee investigation. Although this investigation is separate and unrelated to the Committee's ongoing investigation referred to in the September 26, 2008, and March 17, 2009 letters, the underlying guidance in the two previous letters approving the use of campaign funds for Representative Rangel's legal expenses as well as his former or current staff's legal expenses is applicable. The provision relevant to your inquiry is House Rule 23, clause 6 which provides as follows:

A Member, Delegate, or Resident Commissioner—

(a) shall keep the campaign funds of such individual separate from the personal funds of such individual;

(b) may not convert campaign funds to personal use in excess of an amount representing reimbursement for legitimate and verifiable campaign expenditures; and

(c) except as provided in clause 1(b) of rule XXIV, may not expend funds from a campaign account[] of such individual that are not attributable to bona fide campaign or political purposes.

Without repeating all relevant guidance previously provided in the September 26, 2009, and March 17, 2009, letters, we reiterate that the Committee has determined that it is generally permissible under House rules for a Member to use campaign funds to pay for the Member's own legal fees which arise in connection with the Member's campaign, election, or the performance of official duties.

Based on the information provided, we conclude that it is within Representative Rangel's discretion to use campaign funds for his legal expenses arising from the area of investigation identified in your September 18, 2009, letter.<sup>1</sup> The Committee investigation of Representative Rangel's participation in the Carib News Foundation Conferences arose in connection with the performance of Representative Rangel's official duties. This authority extends to expenditure of funds from Representative Rangel's principal campaign committee for his own legal expenses resulting from the current review of this matter by the Committee.

***Question 2: May Representative Rangel use campaign funds to pay legal expenses incurred by members of his staff in connection with the ongoing Committee investigation?***

As noted in the Committee's letter of March 17, 2009, as a general matter, Representative Rangel may use funds from his principal campaign committee to pay legal expenses incurred by certain current and former members of his personal staff of his personal staff, campaign staff, and Ways & Means committee staff in connection with the ongoing Committee investigation. We reemphasize, however, as set forth in more detail in our letter of March 17, 2009, any such use of campaign funds to pay such expenses may implicate a number of House rules and standards of conduct, and Representative Rangel should keep those rules and standards in mind as he considers whether to pay such expenses.

Depending on the circumstances presented, an appearance of impropriety may arise from using campaign funds to pay the legal expenses of congressional staff. As noted in our letter of March 17, 2009, Representative Rangel may address the possibility that payment of staff legal expenses would create an appearance of impropriety by abiding by the following conditions:

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<sup>1</sup> This analysis does not in any way affect the Committee's review of the merit of the underlying matter that is the subject of your request for use of campaign funds for legal expenses. The Committee will respond to that issue separately.

Mr. Phu Huynh  
October 8, 2009  
Page 3

1. Any staff member who wishes to seek reimbursement is free to choose their own counsel without influence from Representative Rangel or his counsel;
2. Legal fees will be paid for all staff who request reimbursement of legal fees, regardless of their choice of legal counsel; and
3. Neither Representative Rangel nor his counsel will choose among staffers as to who is entitled to payment of fees, or as to what fees should be paid.

Your September 18, 2009, letter and communication with Committee staff indicate you are seeking Committee approval for the use of Representative Rangel's campaign funds to pay legal expenses for his staff in connection with the Committee's Carib News Foundation investigation. The Committee concludes, consistent with our approval regarding Representative Rangel's own legal expenses, that any relevant knowledge Representative Rangel's staff may have regarding the subject of the Committee investigation in this new area of inquiry results exclusively from Representative Rangel's position and conduct as a Member. Therefore, Representative Rangel's payment of legal expenses for members of his staff could properly be considered connected to his official duties and could also serve a valid political purpose with regard to Representative Rangel's cooperation with the Committee's investigation.

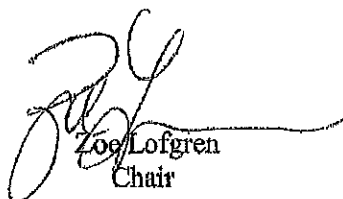
As a result, it is within Representative Rangel's discretion to use campaign funds to pay the legal fees in connection with the Committee's Carib News Foundation investigation for involved staff, subject to the representations you have made that Representative Rangel's staff is able to choose their own counsel and that reimbursement for staff expenses will be made to all who request such payment regardless of their choice of counsel. In addition to the factual representations you made regarding the conditions that have already been imposed, we recommend that Representative Rangel identify the names of the staff members whose legal expenses are paid from campaign funds in FEC filings disclosing the fact of such payments. Lastly, Representative Rangel must promptly notify the Committee if he stops paying all or part of staff legal expenses and explain the reasons for that decision.

As noted in our letter of March 17, 2009, the Federal Election Commission (FEC) administers a separate set of restrictions on the use of campaign funds pursuant to the Federal Election Campaign Act. Thus we recommend that you consult with the FEC to determine whether this proposed expenditure is permissible under the applicable law and regulations, if you have not already done so.


Mr. Phu Huynh  
October 8, 2009  
Page 4

If you have any further questions, please contact the Committee's Office of Advice and Education at extension 5-7103.

Sincerely,



Zoe Lofgren  
Chair



Jo Bonner  
Ranking Republican Member

ZL/JB:sac

ZOE LOFGREN, CALIFORNIA  
CHAIR

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ONE HUNDRED ELEVENTH CONGRESS

## U.S. House of Representatives

COMMITTEE ON STANDARDS OF  
OFFICIAL CONDUCT

Washington, DC 20515-6328

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KELLE A. STRICKLAND,  
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(202) 225-7103

September 7, 2010

Mr. Phu Huynh  
Oldaker, Biden & Belair, LLP  
818 Connecticut Avenue, NW  
Suite 100  
Washington, DC 20006

Dear Mr. Huynh:

This responds to your letters of August 16 and 17, 2010, on behalf of Representative Charles Rangel seeking guidance on whether Representative Rangel may use funds from his principal campaign committee to pay certain legal expenses for himself as well as legal expenses for certain current and former members of his personal staff and Ways and Means Committee staff in connection with an investigation by the Department of Justice of privately-sponsored, officially-connected travel by Members of Congress, including Representative Rangel, to two conferences hosted by Carib News/Carib News Foundation during 2007 and 2008. The Committee has long advised Members to consult with the Committee prior to using campaign funds for legal expenses to ensure that the legal services are ones that the Member may properly pay with campaign funds.

***Question 1: May Representative Rangel use campaign funds to pay his own legal expenses incurred related to the Justice Department Investigation of the Carib News/Carib News Foundation 2007 and 2008 Conferences?***

As you know, on September 26, 2008, March 17, 2009, and October 8, 2009, the Committee approved Representative Rangel's use of campaign funds for his own legal expenses in connection with matters previously under Committee investigation, some of which are currently being adjudicated by the Committee. Your August 2010 letters identify a related Justice Department investigation. The underlying guidance provided in the three previous letters approving the use of campaign funds for Representative Rangel's legal expenses as well as his former or current staff's legal expenses is applicable. The provision relevant to your inquiry is House Rule 23, clause 6 which provides as follows:

A Member, Delegate, or Resident Commissioner—

(a) shall keep the campaign funds of such individual separate from the personal funds of such individual;

(b) may not convert campaign funds to personal use in excess of an amount representing reimbursement for legitimate and verifiable campaign expenditures; and

(c) except as provided in clause 1(b) of rule XXIV, may not expend funds from a campaign account[] of such individual that are not attributable to bona fide campaign or political purposes.

Without repeating all relevant guidance previously provided in the 2009 letters, the Committee has determined that it is generally permissible under House rules for a Member to use campaign funds to pay for the Member's own legal fees which arise in connection with the Member's campaign, election, or the performance of official duties.

Based on the information provided, we conclude that it is within Representative Rangel's discretion to use campaign funds for his legal expenses arising from the area of investigation identified in your August 2010 letters. The Justice Department investigation of Representative Rangel's participation in the Carib News Foundation Conferences arose in connection with the performance of Representative Rangel's official duties. This authority extends to expenditure of funds from Representative Rangel's principal campaign committee for his own legal expenses resulting from the current review of this matter by the Committee.

***Question 2: May Representative Rangel use campaign funds to pay legal expenses incurred by members of his staff in connection with the Justice Department investigation?***

As noted in the Committee's letters of March 17, 2009, and October 8, 2009, as a general matter, Representative Rangel may use funds from his principal campaign committee to pay legal expenses incurred by certain current and former members of his personal staff, campaign staff, and Ways & Means committee staff in connection with the Justice Department Investigation. We reemphasize, however, as set forth in more detail in our letter of March 17, 2009, that any such use of campaign funds to pay such expenses may implicate a number of House rules and standards of conduct, and Representative Rangel should keep those rules and standards in mind as he considers whether to pay such expenses.

The Committee routinely advises Members to avoid situations that may cause the appearance of impropriety. See House Rule 23, cl. 1 (requiring the conduct of a Member at all times to reflect creditably on the House). Depending on the circumstances presented, an appearance of impropriety may arise from using campaign funds to pay the legal expenses of congressional staff. Specifically, the payment of staff legal expenses may be perceived as an action that may influence the testimony or cooperation of the staff involved. This concern is

heightened if the Member is in the position to consider the Member's own legal situation when making determinations as to: (1) which staff would have their legal expenses paid; and (2) the amount and nature of the legal expenses eligible for reimbursement.

It is not possible to set forth all of the circumstances that may bear on the propriety of payment of staff legal expenses in any specific context. However, we have formulated a number of guidelines with which you should comply to address the foregoing concerns about your payment of staff legal expenses. In addition to the House rules, these guidelines reflect attorney ethical obligations regarding dual representation and payment of legal expenses by a third party in the American Bar Association's Model Rules of Professional Conduct. *See* Model Rules 1.7 and 1.8 (enclosed for your reference). Compliance with the following guidelines will help you avoid the appearance of impropriety:

1. Any members of your staff should avoid being represented by any counsel who simultaneously represents you, or who is employed by the same law firm as any counsel who has been engaged to represent you.
2. While you, or your attorney, may recommend or suggest the hiring of a particular counsel to your staff, you may only use campaign funds to pay staff legal expenses if each staff member is free to engage counsel of his or her choosing, regardless of your recommendation.
3. Should any staff member choose to be represented by the same counsel and/or law firm which represents you, we suggest that you and that individual execute a written agreement consenting to dual representation consistent with the ABA Model Rules.
4. While you are not required to use your campaign funds to pay the legal expenses of every employee requesting such reimbursement, you should exercise caution and apply uniform standards in determining whose legal expenses to reimburse in order to avoid any appearance of impropriety.
5. You should obtain guidance from the Federal Election Commission (FEC) and follow the requirements of such guidance before using your campaign funds to pay legal expenses for any staff members.
6. The identity of any staff members whose legal expenses are paid from campaign funds should be identified in filings made with the FEC disclosing the fact of such payments.
7. Any staff for whom you intend to offer to pay legal expenses should be furnished with a copy of this letter and encouraged to contact the Committee with any questions or concerns regarding this guidance.

Your August 16, 2010, letter and communications with Committee staff indicate you are seeking Committee approval for the use of Representative Rangel's campaign funds to pay legal expenses for his staff in connection with the Justice Department's Carib News Foundation



Mr. Phu Huynh

Page 4

investigation. The Committee concludes, consistent with our approval regarding Representative Rangel's own legal expenses, that any relevant knowledge Representative Rangel's staff may have regarding the subject of the Justice Department's investigation results exclusively from Representative Rangel's position and conduct as a Member. Therefore, Representative Rangel's payment of legal expenses for members of his staff could properly be considered connected to his official duties and could also serve a valid political purpose with regard to Representative Rangel's cooperation with the Justice Department's investigation.

As a result, it is within Representative Rangel's discretion to use campaign funds to pay the legal fees in connection with the Justice Department's Carib News Foundation investigation for involved staff, subject to the representations you have made that Representative Rangel's staff is able to choose their own counsel and that reimbursement for staff expenses will be made to all who request such payment regardless of their choice of counsel. In addition to the factual representations you made regarding the conditions that have already been imposed, we recommend that Representative Rangel identify the names of the staff members whose legal expenses are paid from campaign funds in the Federal Election Commission (FEC) filings disclosing the fact of such payments. Lastly, Representative Rangel must promptly notify the Committee if he stops paying all or part of staff legal expenses and explain the reasons for that decision.

As noted in our letters of March 17, 2009, and October 8, 2009, the FEC administers a separate set of restrictions on the use of campaign funds pursuant to the Federal Election Campaign Act. Thus we recommend that you consult with the FEC to determine whether this proposed expenditure is permissible under the applicable law and regulations, if you have not already done so.

If you have any further questions, please contact the Committee's Office of Advice and Education at extension 5-7103.

Sincerely,



Zoe Lofgren

Chair



Jo Bonner

Ranking Republican Member

ZL/JB:haj

ZOE LOFGREN, CALIFORNIA  
CHAIR  
BEN CHANDLER, KENTUCKY  
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KATHY CASTOR, FLORIDA  
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COUNSEL TO THE CHAIR  
R. BLAKE CHISAM,  
CHIEF COUNSEL AND STAFF DIRECTOR

ONE HUNDRED ELEVENTH CONGRESS

## U.S. House of Representatives

COMMITTEE ON STANDARDS OF  
OFFICIAL CONDUCT

Washington, DC 20515-6328

JO BONNER, ALABAMA  
RANKING REPUBLICAN MEMBER

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(202) 226-7103

October 29, 2010

The Honorable Charles B. Rangel  
U.S. House of Representatives  
2354 Rayburn House Office Building  
Washington, DC 20515

Dear Colleague:

This responds to your letter of October 25, 2010, requesting Committee guidance on seeking and accepting *pro bono* or reduced-fee legal representation in connection with the disciplinary proceedings currently pending against you before the Committee.

In your letter, you state, "I am asking the Committee to approve my seeking . . . counsel [on a *pro bono* or reduced fee basis] without me or the counsel being accused of seeking, receiving or providing gift representation." You also state, "In the alternative, the Committee can arrange for the House to pay for my counsel." We have construed your request as a request for an advisory opinion from the Committee's Office of Advice and Education.<sup>1</sup>

While House Rules authorize the Committee to consider requests for advisory opinions, such authority is limited to "the general propriety of any current or proposed conduct" of the inquiring individual.<sup>2</sup> Moreover, in providing written responses to requests for an opinion, the Committee has a long-established policy of addressing "the conduct only of the inquiring individual, or of persons for whom the inquiring individual is responsible as [the] employing authority."<sup>3</sup>

Because your letter does not provide specific details about how or from whom you would seek legal representation, we cannot definitively address whether the activities described in your letter are permissible under applicable House rules, laws, regulations or other applicable standards of conduct. We can, however, offer you some general guidance on the rules and standards of conduct applicable to Members of the House that are relevant to your inquiry.

### I. FACTUAL BACKGROUND

According to your letter and publicly-available materials, the background on this matter is as follows. The Committee has been conducting formal disciplinary proceedings into allegations that

<sup>1</sup> See House Rule 11, cl. 3(a)(4); Committee Rule 3(b).

<sup>2</sup> House Rule 11, cl. 3(a)(4).

<sup>3</sup> Committee Rule 3(d).

you violated House rules, laws, regulations, or other applicable standards of conduct. On July 22, 2010, an investigative subcommittee transmitted a Statement of Alleged Violation (SAV) to the full Committee. You are currently scheduled to appear before an adjudicatory subcommittee on November 15, 2010, for an adjudicatory hearing on the allegations charged in the SAV.

During the course of the proceedings, you were represented by the Washington, D.C., law firm of Zuckerman Spaeder. To date, this representation has generated legal bills of over \$2 million. To date, you have largely used funds from your principal campaign committee to pay those expenses. However, as of October 14, 2010, Zuckerman Spaeder withdrew from serving as your counsel. As of the date of your letter, you have been unable to secure new counsel to represent you in this matter.

Your October 25, 2010, letter inquires about the permissibility of two options for securing and accepting legal assistance: (1) having the House pay for your counsel; or (2) allowing you to solicit private counsel to represent you on a *pro bono* (free) or reduced-fee basis. The remainder of this letter provides general guidance on each of these options in turn.

## II. LEGAL AUTHORITY AND ANALYSIS

### A. Counsel Paid by the House

Your first proposal is that the Committee or the House of Representatives as a whole pay for any further legal costs incurred in connection with the adjudication of this matter. A provision in the Committee's rules provides a respondent in disciplinary proceedings before the Committee with the right to be represented by counsel.<sup>4</sup> However, the rule also expressly provides that any such representation is "to be provided at the respondent's own expense."<sup>5</sup> Thus, the Committee, in promulgating its rules, has weighed and rejected the option of the government paying for legal representation for individuals whom the Committee is investigating.

A federal statute also restricts the use of House funds to the purposes for which those funds were appropriated.<sup>6</sup> Pursuant to this statute, any funds of the House may be used only to perform, or pay for, the official governmental duties of the Member, committee, or other office to whom the funds were appropriated. Because your legal representation for purposes of the disciplinary proceedings before the Committee is a matter wholly related to your own official duties, no funds of the House other than funds appropriated to your congressional office for the conduct of official congressional business (*i.e.*, your Member's Representational Allowance, or MRA) could be expended for that purpose under the statute. However, we note that the Committee on House Administration, rather than this Committee, has jurisdiction over the approval of reimbursements from your MRA.<sup>7</sup>

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<sup>4</sup> Committee Rule 26(a).

<sup>5</sup> *Id.*

<sup>6</sup> 31 U.S.C. §1301(a).

<sup>7</sup> We understand that the Committee on House Administration has determined that the cost of legal representation of a Member in a Committee adjudicatory proceeding is not reimbursable from the Member's official funds because such expenses are not considered to be "ordinary and necessary" expenses. See Comm. on House Admin., *Member's Handbook*, at 1 ("Ordinary and necessary expenses incurred by the Member . . . in support of the

In sum, it appears that Committee rules, House regulations, and a federal statute would prohibit the House from providing you with legal representation for the remaining phases of the disciplinary proceedings before the Committee.<sup>8</sup>

**B. Soliciting or Accepting Free or Reduced-Fee Legal Services**

The second option addressed in your letter involves you seeking private counsel to represent you on a no-cost or reduced fee basis. This proposal implicates ethics provisions governing both acceptance of gifts and solicitation of things of value.

House rules define the term “gift” to mean:

a gratuity, favor, discount, entertainment, hospitality, loan forbearance, or other item having monetary value. The term includes gifts of services, training, transportation, lodging, and meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.<sup>9</sup>

The definition of gift expressly includes gifts of services. Thus, the value of legal services provided to a Member at no cost would be deemed to be a gift under the gift rule.<sup>10</sup> Members may not accept any gift, except as specifically permitted by House rules.<sup>11</sup>

One of the permissible exceptions to the prohibition on gifts is for contributions to a legal expense fund by someone other than a registered lobbyist or agent of a foreign principal.<sup>12</sup> This exception provides that a Member, officer, or employee may accept “a contribution or other payment to a legal expense fund established for the benefit of a Member, . . . officer, or employee of the House that is otherwise lawfully made in accordance with the restrictions and disclosure requirements of the Committee on Standards of Official Conduct.”<sup>13</sup> The Committee has expressly stated that such a fund is permissible for legal expenses that arise in connection with a matter concerning “[t]he individual’s duties or position in Congress (including a matter before the Standards Committee).”<sup>14</sup> If you did establish a valid legal expense trust in relation to this matter, you would be permitted to solicit donations to the trust of money or in-kind services (including free or discounted legal services), provided such solicitations and donations were

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Member’s official and representational duties to the district from which elected are reimbursable . . . .”) (emphasis added).

<sup>8</sup> General ethics principles for the legal profession also may restrict the House from serving as counsel to both the Committee and counsel to the defense in this matter. *See, e.g.*, ABA, Model Rules of Professional Conduct R. 1.7.

<sup>9</sup> House Rule 25, cl. 5(a)(2)(A).

<sup>10</sup> As a general matter, the amount of any discount on the cost of legal fees offered to a Member based on that individual’s official status would be deemed a gift for purposes of the gift rule. *See* House Rule 25, cl. 5(a)(2)(A).

<sup>11</sup> House Rule 25, cl. 5(a)(1)(A)(i); *see also* House Rule 23, cl. 4.

<sup>12</sup> *See* House Rule 25, cl. 5(a)(3)(E).

<sup>13</sup> *Id.*

<sup>14</sup> *2008 House Ethics Manual* at 64.

made in compliance with Committee regulations regarding legal expense trusts.<sup>15</sup> The rules for establishing, maintaining, and providing public disclosure about such a fund are contained in the appendices to the *2008 House Ethics Manual*.<sup>16</sup>

In addition, because an important aspect of a Member's responsibility is representing the interests of his constituents in matters in which the federal government has an interest, the Committee has determined that *pro bono* assistance to participate in certain actions involving the federal government falls within the gift rule exception for contributions to legal expense funds.<sup>17</sup> Specifically, as stated in the *2008 House Ethics Manual*, a Member may accept *pro bono* legal assistance, without limit, for the following purposes:

- To file an amicus brief in his or her capacity as a member of Congress;
- To participate in a civil action challenging the validity of any federal law or regulation; or
- To participate in a civil action challenging the lawfulness of an action of a federal agency, or an action of a federal official taken in an official capacity, provided that the action concerns a matter of public interest, rather than a matter that is personal in nature.<sup>18</sup>

The Committee has permitted the acceptance of *pro bono* legal services for the purposes listed above because such services would be to enable a Member to fulfill his official duties as an advocate for the greater good of his constituents due to the subject matter of the litigation.<sup>19</sup> That principle of serving the greater good would not be met through providing legal services to defend an individual Member against allegations of misconduct by an individual Member in a disciplinary action by the Committee.<sup>20</sup>

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<sup>15</sup> See Comm. on Standards of Official Conduct, "Legal Expense Fund Regulations" ¶ 1 (June 10, 1996), reprinted in *2008 House Ethics Manual* at 394.

<sup>16</sup> See generally *id.*, reprinted in *2008 House Ethics Manual* at pages 394-96.

<sup>17</sup> See *2008 House Ethics Manual* at 65.

<sup>18</sup> *Id.*

<sup>19</sup> See *id.* at 64, 65; see also *Black's Law Dictionary*, 8th ed. (West 1999) at 1240-41 (defining "pro bono" as "[b]eing or involving uncompensated legal services performed [especially] for the public good").

<sup>20</sup> Because your letter does not provide specific details about how or from whom you would seek such representation, we cannot, as noted above, definitively address whether any other exceptions to the House gift rule may potentially apply in this matter. See House Rule 25, cl. 5. For example, we note that the Committee has, in the past, approved an unsolicited reduced fee arrangement offered by a law firm to a Member. However, it should be noted that the approved arrangement involved a fee structure regularly offered to other clients of the firm in similar circumstances. We also note that the Committee has permitted House employees to accept unsolicited *pro bono* legal representation in personal matters based on the personal friendship exception to the gift rule. See House Rule 25, cl. 5(a)(3)(D).

In any case, a federal statute prohibits Members and House staff from soliciting anything of value.<sup>21</sup> This statute gives this Committee, as the supervising ethics office for the House, the authority to issue rules or regulations providing for reasonable exceptions to this prohibition.<sup>22</sup> Under this authority, the Committee has permitted Members to solicit for a legal expense fund that has been established and approved by the Committee in accordance with the Legal Expense Fund Regulations.<sup>23</sup> The Committee has never approved the solicitation of *pro bono* legal services incurred in connection with a disciplinary matter before the Committee, unless the solicitation was for the donation of goods or services to a valid legal expense trust established for that purpose.

Based on the foregoing authority and precedent, because the subject matter of the Committee investigation concerns your conduct, rather than the actions of the federal government, it would not be permissible for you to solicit or accept *pro bono* or reduced-fee legal representation in connection with the ongoing disciplinary proceedings, absent the establishment of a legal expense fund for such purpose.

### III. CONCLUSION

Accordingly, as explained more fully above, House and Committee rules and the applicable federal statutes would prohibit the House from paying for your legal representation. In addition, it is likely that, absent the establishment of a valid legal expense fund for that purpose, you may not solicit or accept *pro bono* or reduced-fee representation related to the disciplinary proceedings before the Committee. While not proposed as an option in your letter, it would be permissible for you to establish a legal expense fund to accept contributions of: (1) money that could be used to defray any legal expenses incurred in connection with the ongoing Committee disciplinary proceedings; or (2) in-kind donations of free or discounted legal services for the same purpose. As stated above, any such legal expense fund would have to be established and maintained in accordance with the Committee's Legal Expense Fund Regulations.

### IV. LIMITATIONS

The response above constitutes an advisory opinion concerning the application of House Rule 11, clause 3; House Rule 23, clause 4; House Rule 25, clause 5; Committee Rule 3; Committee Rule 26; the Legal Expense Fund Regulations, 5 U.S.C. § 7353; and 31 U.S.C. § 1301. The following limitations apply to this opinion:

- This advisory opinion is issued only to Representative Charles B. Rangel, the requestor of this opinion. This advisory opinion cannot be relied upon by any other individual or entity.

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<sup>21</sup> See 5 U.S.C. § 7353(a).

<sup>22</sup> See *id.* § 7353(b)(1).

<sup>23</sup> See Legal Expense Fund Regulations, reprinted in 2008 House Ethics Manual at 394-96; see also 2008 House Ethics Manual at 63-64.

- This advisory opinion is limited to the provisions of House rules and regulations and federal statute specifically noted above. No opinion is expressed or implied herein regarding the application of any other federal, state, or local statute, rule, regulation, ordinance, or other law that may be applicable to the proposed conduct described in this letter.
- This advisory opinion will not bind or obligate any entity other than the Committee on Standards of Official Conduct of the United States House of Representatives.
- This advisory opinion is limited in scope to the specific proposed conduct described in this letter and does not apply to any other conduct, including that which appears similar in nature or scope to that described in this letter.

The Committee will take no adverse action against you in regard to any conduct that you undertake, or have undertaken, in good faith reliance upon this advisory opinion, so long as you have presented a complete and accurate statement of all material facts relied upon herein, and the proposed conduct in practice conforms with the information you provided, as addressed in this opinion.

Changes or other developments in the law (including, but not limited to, the Code of Official Conduct, House rules, Committee guidance, advisory opinions, statutes, regulations or case law) may affect the analysis or conclusions drawn in this advisory opinion. The Committee reserves the right to reconsider the questions and issues raised in this advisory opinion and to rescind, modify, or terminate this opinion if required by the interests of the House. However, the Committee will rescind an advisory opinion only if relevant and material facts were not completely and accurately disclosed to the Committee at the time the opinion was issued. In the event that this advisory opinion is modified or terminated, the Committee will not take any adverse action against you with respect to any action taken in good faith reliance upon this advisory opinion so long as such conduct or such action was promptly discontinued upon notification of the modification or termination of this advisory opinion.

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If you have any further questions, including further information on establishing a legal defense fund, please contact the Committee's Office of Advice and Education at extension 5-7103.



Zoe Lofgren  
Chair

Sincerely,



Jo Bonner  
Ranking Republican Member



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October 14, 2010

Honorable Zoe Lofgren, Chair  
Committee on Standards of Official Conduct  
U.S. House of Representatives  
The Capitol, Suite HT-2  
Washington, D.C. 20515

Re: Representation of Congressman Charles B. Rangel

Dear Chairwoman Lofgren:

I write to notify the Committee that this firm no longer represents Congressman Rangel and we are withdrawing our appearance as counsel to him in all matters before this Committee. We will assist in the transition of the matter to successor counsel or to the Congressman personally. Until further notice, please direct future communications regarding this matter to Congressman Rangel personally.

Sincerely,

Leslie B. Kiernan

c: Honorable Charles B. Rangel  
Honorable Michael McCaul, Ranking Republican Member  
R. Blake Chisam, Staff Director and Chief Counsel