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Congress of the United States
House of Representatives
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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

August 12, 2010

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 reproval 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 15th 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 reproval.

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.*

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,

Robert C. "Bobby" Scott

Member of Congress

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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

111TH CONGRESS

2d Session

COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

INVESTIGATIVE SUBCOMMITTEE

IN THE MATTER OF REPRESENTATIVE CHARLES B. RANGEL

MINORITY VIEWPOINT OF

REPRESENTATIVE ROBERT C. "BOBBY" SCOTT

August 12, 2010

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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 reproval, 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.[1] 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."[2] 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"[3] that Representative Rangel committed the following counts included in the investigative subcommittee's adopted and transmitted Statement of Alleged Violation:

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[1] *See e.g.*, House Comm. on Standards of Official Conduct, *In the Matter of Representative Robert L.F. Sikes*, H. Rep. 94-1364, 94th 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).

[2] House Rule XXIII, cl. 1.

[3] 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.[4] 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.[5] Traditionally, mistakes on Financial Disclosure statements are

[4] 2008 *House Ethics Manual* at 181.
[5] Interview of Charles B. Rangel (hereinafter Rangel Int. Tr.) at 164.

corrected without sanction,[6] but because of the scope and amount of Representative Rangel's mistakes, the formal sanction of a letter of reproval is appropriate.

Finally, Representative Rangel leased a rent-stabilized apartment in Harlem's Lenox Terrace complex after it had been vacant for several months[7] 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.[8] 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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[6] *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).
[7] *See* CSOC.CBR.00000004, CSOC.CBR.00000008.
[8] 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 reproval, 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 Reproval is the Appropriate Sanction in this Matter

A public letter of reproval 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."[9] Based on Representative Rangel's conduct in this matter and the prior precedents of the Standards Committee, a public letter of reproval 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."[10] 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."[11] The Committee recommended the sanction of reprimand where Members were found to have had inappropriate sexual

[9] *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).

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

[11] 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.[12] 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 reproval.

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.[13] 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." [14] After an extensive review of these claims, an investigative subcommittee found that many of Representative Smith's allegations of bribery were "overstated"[15] and that his overstatement could support a violation of House Rule XXIII, Clause 1, as tending to impugn the House as an institution.[16] 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."[17] 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."[18] 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."[19] Representatives Smith and Miller, as well as Majority Leader DeLay, were each publicly admonished regarding their conduct in this matter.[20]

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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[12] 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).
[13] 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, 108th Cong., 2d Sess. at (2004).
[14] *Id.* at 39.
[15] *Id.*
[16] *Id.* at 40.
[17] *Id.* at 37.
[18] *Id.* at 41.
[19] *Id.*
[20] *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."[21] The fundraiser "took place just as the House-Senate conference on major energy legislation, H.R. 4, was about to get underway."[22] 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.[23] 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."[24] 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."[25] Despite Representative DeLay's conduct and leadership position, a public letter of reproval 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.[26] Prior to that, during the 105th 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.[27] 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.[28] 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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[21] 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.
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.* A separate allegation was deferred due to an open state grand jury investigation.
[27] House Comm. on Standards of Official Conduct, *Summary of Activities One Hundred Fifth Congress*, H. Rep. 105-848, 105th Cong., 2d Sess. at 9-10 (1999).
[28] *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 107th 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*,[29] 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.[30] 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.[31]

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.[32] 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."[33] 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."[34] 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."[35] 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."[36] Although

[29] House Comm. on Standards of Official Conduct, *In the Matter of Representative Earl F. Hilliard*, H. Rep. 107-130, 107th Cong., 1st Sess. (2001).
[30] *Id.* at 13, 34, and 39.
[31] *Id.* at 100-101.
[32] *Id.* at 99-102.
[33] *Id.* at 102.
[34] *Id.* at 101.
[35] *Id.* at 101.
[36] *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 reproval apply to Representative Rangel. Furthermore, I believe that Representative Rangel would have settled this matter if he had been offered a letter of reproval, 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"[37] 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.[38]

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 reproval 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."[39] As such, a letter of reproval is the appropriate sanction.

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

[37] *89 Christopher, Inc. v. Joy*, 318 N.E.2d 776, 780 (N.Y. 1974).
[38] House Comm. on Standards of Official Conduct, *In the Matter of Representative Earl F. Hilliard*, H. Rep. 107-130, 107th Cong., 1st Sess. at 4-6 (2001).
[39] *Id.* at 102.

financial institutions.[40] 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.[41] The Standards Committee also found that Representative Rose failed to report six liabilities to financial institutions.[42] There was no indication that the liabilities to the financial institutions were problematic; rather, the mere non-disclosure was the issue.[43] 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.[44] 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.[45]

The Standards Committee recommended that Representative Rose "be issued a formal and public letter of reproval 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."[46] These circumstances included his "admissions and corrective action" related to his financial disclosures.[47] 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"[48] 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 reproval is appropriate.

The Standards Committee has also deemed a letter of reproval 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."[49] In *In the Matter of Representative E.G. "Bud" Shuster*,[50] 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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[40] House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles G. Rose III*, H. Rep. 100-526, 100th Cong., 2d Sess. (1988).
[41] *Id.* at 25.
[42] *Id.*
[43] *Id.* at 20-22.
[44] "Policy Regarding Amendments to Financial Disclosure Statements" (Apr. 23, 1986), reprinted in the *2008 House Ethics Manual* at 379.
[45] House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles G. Rose III*, H. Rep. 100-526, 100th Cong., 2d Sess. at 22 (1988).
[46] *Id.* at 26.
[47] *Id.* at 22.
[48] *Id.*
[49] 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 3E (2000).
[50] House Comm. on Standards of Official Conduct, *In the Matter of Representative E.G. "Bud" Shuster*, H. Rep. 106-979, 106th 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.[51] 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.[52] Representative Shuster violated House rules by routinely using congressional staff for campaign purposes over the course of several years.[53] 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.[54]

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."[55] However, the investigative subcommittee ultimately deemed a letter of reproval appropriate because Representative Shuster admitted to the charges and "acknowledged that his conduct did not reflect creditably on the House."[56] The Standards Committee adopted the investigative subcommittee's recommended sanction, issuing a public letter of reproval. 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."[57] 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.[58] 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*."[59] 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."[60] Members can identify

[51] *Id.* at 9-13, 19-31.
[52] *Id.* at 14-16.
[53] *Id.* at 51-64.
[54] *Id.* at 64-79.
[55] *Id.* at 113.
[56] *Id.* at 114.
[57] *Id.* at 3E.
[58] *Id.* at 6, 43.
[59] *Id.*
[60] 2008 *House Ethics Manual* at 348.

themselves as a Member of Congress or use their leadership title on any such solicitation.[61] 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.[62]

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.[63] 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 reproval, 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 100th 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. [64] 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."[65] 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."[66] 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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[61] *Id.*
[62] *Id.* at 348-349.
[63] *Id.*
[64] House Comm. on Standards of Official Conduct, *In the Matter of Representative Richard H. Stallings*, H. Rep. 100-382, 100th Cong., 1st Sess. (1987).
[65] *Id.* at 4 (citing *Manual of Offenses and Procedures, Korean Influence Investigation*, June 1977 at 31).
[66] *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.[67] There was also was a "strong presumption" his wife did not perform services for which she was paid with congressional funds.[68] 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.[69] Representative Rangel voluntarily relinquished his position with the House Committee on Ways on 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.[70] 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.[71] Although the Standards Committee recommended a sanction of censure and the denial of Representative Wilson's committee chairmanship,[72] 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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[67] *See* H. Rep. 2349, 89th Cong. 2d Sess. (1966); H. Rep. 27, 90th Cong., 1st Sess. (1967).
[68] *Id.*
[69] 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.
[70] House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson*, H. Rep. 96-930, 96th Cong., 2d Sess. (1980).
[71] *Id.* at 2.
[72] *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 reproval 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."[73] 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."[74] 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."[75] Each of these mitigating factors is present in the matter involving Representative Rangel's conduct and points to a letter of reproval 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.[76]

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."[77] 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.[78] Likewise,

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[73] House Comm. on Standards of Official Conduct, *In the Matter of Representative Richard H. Stallings*, H. Rep. 100-382, 100th Cong., 1st Sess. at 5 (1987).
[74] *Id.*
[75] *Id.*
[76] *See* House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles G. Rose, III*, H. Rep. 100-526, 100th Cong., 2d Sess. (1988); *see also* House Comm. on Standards of Official Conduct, *In the Matter of Representative Jim Bates*, H. Rep. 101-293, 101st Cong., 1st Sess. (1989).
[77] 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.
[78] 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.[79] 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.[80] 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"[81] 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 15th 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.[82] 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.[83] 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.[84]

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[79] CSOC.CBR.00000004; CSOC.CBR.00000008.

[80] *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.

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

[82] *See* Letter from Representative Charles Rangel to Gregory Williams, dated December 7, 2004. CSOC.CBR.00002978- CSOC.CBR.00002979.

[83] 153 Cong. Rec. H8133-35; H8163-64 (daily ed. July 19, 2007).

[84] 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."[85] 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."[86] 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."[87] 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."[88] 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,"[89] 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"[90] 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.[91] 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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[85] 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."

[86] 2008 *House Ethics Manual* at 335.

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

[88] *Id.* at 41.

[89] 2008 *House Ethics Manual* at 335 (emphasis added).

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

[91] *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.[92] 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.[93] 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."[94] 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."[95] 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 reproval is the appropriate sanction for Representative Rangel's conduct. Although the Standards Committee has traditionally recommended no sanction for "technical"

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[92] Interview Transcript of Rachelle Butler, November 14, 2008 (hereinafter Butler Int. Tr. 11/14/08) at 28.
[93] *See e.g.*, CSOC.CBR.00024418.
[94] *Id.*
[95] *Id.*

Financial Disclosure violations,[96] 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 reproval is the appropriate response. The Standards Committee should consider the various mitigating factors that support a sanction of a public letter of reproval 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.[97] 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.[98] Based on these facts, the investigative subcommittee should have recommended a public letter of reproval 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 reproval 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 reproval 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

[96] *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).
[97] CSOC.CBR.00000581.
[98] *Id.*

reprimand only where the conduct involves serious criminal activity, the indication of corruption or a significant abuse of power.[99] 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.[100] 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.[101]

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.[102] The Standards Committee should conclude that a public letter of reproval 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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[99] *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, 101st 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).

[100] *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, 94th 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).

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

[102] House Comm. on Standards of Official Conduct, *In the Matter of Representative Newt Gingrich*, H. Rep. 105-1, 105th 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."[103] 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.[104]

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.[105] 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."[106] The Standards Committee noted that all of the laws and House Rules that Representative Hansen violated "were disclosure-related."[107] 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."[108] The Standards Committee considered recommending the sanction of censure, but found that prior precedent was more consistent with a reprimand.[109]

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

[103] 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).
[104] 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).
[105] 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).
[106] *Id.* at 390.
[107] *Id.*
[108] *Id.*
[109] *Id.*

"conscious purpose" to avoid learning the truth of the statements.[110] 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 reproval, 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."[111] 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.[112]

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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[110] *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).
[111] House Comm. on Standards of Official Conduct, *In the Matter of Representative Robert L.F. Sikes*, H. Rep. 94-1364, 94th Cong., 2d Sess. at 4 (1976).
[112] *Id.*

the Members of the House or the public."[113] However, the Committee found that the failure to report as required by former Rule XLIV is "deserving of a reprimand."[114] 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."[115]

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."[116] 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."[117] 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.[118]

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."[119] 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."[120] 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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[113] *Id.*
[114] *Id.*
[115] *Id.* at 21.
[116] *Id.* at 4.
[117] *Id.*
[118] *Id.* at 5.
[119] 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).
[120] 2008 *House Ethics Manual* at 20.

after he had actively promoted the establishment of that organization in his official capacity."[121] Here, there 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."[122] As such, a letter of reproval, 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*.[123] 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.[124]

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.[125] 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,"[126] defined as anything in excess of $100.[127] 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."[128]

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

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[121] *Id.* at 249.
[122] *Id.* at 187; *supra* note 118.
[123] House Comm. on Standards of Official Conduct, *Korean Influence Investigation*, H. Rep. 95-1817, 95th Cong., 2d Sess. at 9 (1978).
[124] *Id.* at 9-10.
[125] *Id.* at 2.
[126] *Id.* at 3.
[127] *Id.* at 177.
[128] *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.[129]

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.[130]

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."[131] The Standards Committee recommended censuring Representative Roybal, but the House voted to reprimand him.[132]

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.[133] 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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[129] *Id.* at 10.
[130] *Id.* at 59.
[131] 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).
[132] House Comm. on Standards of Official Conduct, *Korean Influence Investigation*, H. Rep. 95-1817, 95th Cong., 2d Sess. at 58 (1978).
[133] 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."[134] 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. [135] 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[ied] that he received a $1,000 cash wedding present from Park."[136] 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."[137] 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."[138] Although the Standards Committee recommended a sanction of censure,[139] 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.[140]

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[134] *Id.* at 1.
[135] *Id.* at 3.
[136] House Comm. on Standards of Official Conduct, *Korean Influence Investigation*, H. Rep. 95-1817, 95th Cong., 2d Sess. at 58 (1978).
[137] 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).
[138] *Id.*
[139] *Id.* at 12.
[140] 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."[141] 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 98th Congress, the Standards Committee recommended that the House reprimand two Members as result of their "improper or illegal sexual conduct" with House pages.[142] 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.[143] The Standards Committee also found that Representative Crane had a sexual relationship with a 17-year old female House page in 1980.[144] 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."[145] 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.[146] The Standards Committee also found that over a nine-year

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[141] Rangel Int. Tr. at 164.
[142] 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).
[143] 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).
[144] 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).
[145] 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).
[146] House Comm. on Standards of Official Conduct, *In the Matter of Representative Austin J. Murphy*, H. Rep. 100-485, 100th 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.[147] Representative Murphy was a former partner in the law firm.[148] 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.[149] 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.[150]

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.[151] 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.[152] 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."[153] Representative Frank also accepted administrative dismissal of 33 parking tickets that he and the associate incurred that were not connected to official business.[154] Between 1985 and 1987, 67 tickets were assessed to Representative Frank's car for non-moving violations.[155] Forty-four of the tickets were dismissed without Representative Frank's knowledge or request.[156] 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.[157] Representative Frank was directed to make full restitution to the District of Columbia government for the amount of

[147] *Id.* at 4.
[148] *Id.* at 86.
[149] *Id.* at 5.
[150] *Id.* at 87.
[151] House Comm. on Standards of Official Conduct, *In the Matter of Representative Barney Frank*, H. Rep. 101-610, 101st Cong., 2d Sess. at 3-4 (1990).
[152] *Id.* at 25-26.
[153] *Id.* at *56*.
[154] *Id.* at 32-33.
[155] *Id.*
[156] *Id.* at 33.
[157] *Id.* at 55.

the 33 tickets waived.[158] 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.[159]

d. Representative Newt Gingrich

During the 105th 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).[160] The Standards Committee found that Representative Gingrich "engaged in activity involving 501(c)(3) organizations that was substantially motivated by partisan, political goals."[161] 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."[162] 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."[163]

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."[164] 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."[165] 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."[166] 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."[167] 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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[158] *Id.*
[159] *Id.* at 4.
[160] House Comm. on Standards of Official Conduct, *In the Matter of Representative Newt Gingrich*, H. Rep. 105-1, 105th Cong., 1st Sess. at 1 (1997).
[161] *Id.* at 4.
[162] *Id.*
[163] *Id.* at 5.
[164] *Id.* at 94.
[165] *Id.* at 91.
[166] Id.
[167] *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."[168] 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)."[169] 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).[170]

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.[171]

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

[168] *Id.* at 94.
[169] *Id.* at 92.
[170] *Id.* at 8.
[171] *Id.* at 91.

numerous capacitates throughout his tenure as the Member of Congress representing the 15th 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.[172]

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.[173] 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.[174] The record demonstrates that Representative Rangel attempted, albeit ineffectively, to ensure that the letters he sent to potential donors to

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[172] Rangel Int. Tr. at 20-21.
[173] House Comm. on Standards of Official Conduct, *In the Matter of Representative Newt Gingrich*, H. Rep. 105-1, 105th Cong., 1st Sess. at 91 (1997).
[174] *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."[175] 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.[176]

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.[177]

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.[178]

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[175] *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.
[176] Rangel Int. Tr. at 14-15.
[177] Butler Int. Tr. 11/14/08 at 28.
[178] 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 reproval 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"[179] 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."[180] 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."[181] However, it is my belief that the record in this case lacked sufficient evidence to create a "substantial reason to believe"[182] 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

[179]Committee on Standards of Official Conduct Rule 24(g).
[180] 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).
[181] House Rule XXIII, cl. 1.
[182] 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.[183] A "gift" is defined as "gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value."[184] The Code of Ethics for Government Service[185] 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

[183] House Rule XXV, cl. 5(a)(1)(A)(i)
[184] House Rule XXV, cl. 5(a)(2).
[185] 72 Stat., Part 2, B12, H. Res. 175, 85th 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."[186] 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."[187] 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."[188] The Rangel Fellowship Program at Howard University encourages minority students and students with financial need to participate and ultimately pursue careers in international affairs.[189]

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

[186] Available at http://www.howard.edu/rjb/rangelprogram_old.htm.
[187] *Id.*
[188] *Id.*
[189] *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.[190]

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."[191] 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

[190] Interview of George Dalley, December 8, 2008 (hereinafter Dalley Int. Tr. 12/8/08) at 36-39.
[191] 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]."[192] 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.[193] Furthermore, the office was an idea proposed by CCNY and ultimately abandoned by CCNY as well.[194] 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."[195] 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.[196] Representative John Campbell of California argued from the floor of the House that the Rangel Center provided direct personal benefits to Representative Rangel.[197] 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."[198] 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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[192] Rangel Int. Tr. at 16.
[193] Interview Transcript of Gregory H. Williams, May 15, 2009 (hereinafter Williams Int. Tr.) at 23-24.
[194] Butler Int. Tr. 11/14/08 at 28.
[195] *Morissette v. U.S.*, 342 U.S. 246 (1952).
[196] *See* 153 Cong. Rec. H8133-35 (daily ed. July 19, 2007).
[197] *Id.*
[198] 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,'"[199] 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."[200] 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.[201]

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."[202] The Manual does not provide any such restriction on indirect benefits resulting to the soliciting official.[203] 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,"[204] 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."[205] 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

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[199] 2008 *House Ethics Manual* at 44 (citing H. Rep. 337, 104th Cong., 1st Sess. 12 (1995)).
[200] House Comm. on Standards of Official Conduct, *Summary of Activities–One Hundred Fourth Congress*, H. Rep. 104-886, 104th Cong., 2d Sess. § IV.A.3 (1997).
[201] House Rule 25, clause 5(a)(3)(O); *see also* 2008 *House Ethics Manual* at 55-6.
[202] 2008 *House Ethics Manual* at 348.
[203] *Id.* at 347-49.
[204] *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)).
[205] 5 U.S.C. § 7353(b)(1).

Committee on Standards of Official Conduct."[206] The Standards Committee is "authorized to issue guidance on any matter contained in this clause."[207] The Office of Government Ethics[208] and the Judicial Conference Committee on Codes of Conduct[209] 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.[210] 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.[211] 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."[212] 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.[213] 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."[214] An honorarium is not considered a gift if it is reported according to the provisions outlined in a subsequent clause.[215] 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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[206] House Rule XXV, cl. 5(h).
[207] *Id.*
[208] Available at http://www.usoge.gov/about/background_mission.aspx.
[209] Available at http://www.uscourts.gov/rulesandpolicies/CodesOfConduct.aspx.
[210] Available at http://www.usoge.gov/about/matters_outside.aspx.
[211] *Id.*
[212] BLACK'S LAW DICTIONARY 533 (Abridged 6th ed. 1991).
[213] *See* 1992 *House Ethics Manual* at 35.
[214] House Rule XXV, cl. 5(f).
[215] *Id.*

"indirect gifts," advising Members that "[t]he word 'indirectly' has principal reference to gifts to the spouse or dependent of a Member."[216] 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."[217] 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.[218]

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."[219] 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.[220] 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."[221]

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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[216] 1992 *House Ethics Manual* at 75.

[217] *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).

[218] *Id.* at 227.

[219] *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).

[220] Compare 2008 *House Ethics Manual* at 348-49 to 1992 *House Ethics Manual* at 319-320.

[221] 2008 *House Ethics Manual* at 76.

New Restrictions on Solicitation;"[222] "Rules Governing (1) Solicitation by Members, Officers and Employees in General, and (2) Political Fundraising Activity in House Offices;"[223] "Amendment of the House Gift Rule;"[224] and "Recent Gift Rule Amendments."[225] 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.[226]

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

[222] Memorandum for All Members, Officers and Employees, from Committee on Standards of Official Conduct, dated April 4, 1995.
[223] Memorandum for All Members, Officers and Employees, from Committee on Standards of Official Conduct, dated April 25, 1997.
[224] Memorandum for All Members, Officers and Employees, from Committee on Standards of Official Conduct, dated January 22, 1999.
[225] Memorandum for All Members, Officers and Employees, from Committee on Standards of Official Conduct, dated April 11, 2003.
[226] 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.[227]

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.[228]

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"[229] 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.[230] This portion of the Manual includes a lengthy discussion about areas of overlap between the congressional solicitation rules

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[227] Dear Colleague letter from Representative Robert W. Ney and Representative Juanita Millender-McDonald, dated September 2, 2005.
[228] Dear Colleague letter from Representative Robert A. Brady, Representative Daniel E. Lungren, Representative Zoe Lofgren and Representative Jo Bonner, dated January 20, 2010.
[229] 2008 *House Ethics Manual* at 33.
[230] *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."[231]

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.[232]

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

[231] House Rule XXV cl. 5(a)(2)(B)(i); *see also* 2008 *House Ethics Manual* at 33.
[232] 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,"[233] donating over $4.9 million to its top grantee, 100 Black Men of America.[234] 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."[235] In 2004, the Starr Foundation donated $1.25 million to Claremont University Center[236] and nearly $2 million to Columbia University in New York.[237] 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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[233] Calendar Year 2004 Form 990-PF for the Verizon Foundation, at 9, available at http://foundation.verizon.com/about/financials/vz990_04.pdf.
[234] *Id.* at 9.
[235] Available at http://www.starrfoundation.org/priorities.html.
[236] 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.
[237] *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.[238] 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."[239] Public universities, such as CCNY, are considered state agencies under this rule.[240] This provision is a "broad" one "which extends to tangible items of all kinds, as well as meals, services, and travel."[241] 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."[242] 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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[238] 2008 *House Ethics Manual* at 348.
[239] House Rule XXV, cl. 5(a)(3)(O).
[240] *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).
[241] 2008 *House Ethical Manual* at 55.
[242] *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.[243]

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."[244] 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.[245] The Supreme Court has noted that offenses that require no *mens rea* are generally disfavored,[246] because "[t]he existence of a mens rea is the rule of, rather than the exception to,

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[243] *Id.* at 34.
[244] 18 U.S.C. § 1719.
[245] *Staples v. United States*, 511 U.S. 600, 605 (1994).
[246] *Id.* at 606.

the principles of Anglo-American criminal jurisprudence."[247] 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."[248] The criminal Franking statute provides explicit guidance in this case.[249]

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.[250] 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."[251] Courts often determine the plain meaning of words in a statute by referring to dictionaries; [252] the Standards Committee has also adopted this practice.[253] 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."[254] "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."[255] "To" can also mean "[f]or the purpose of" as in "went out to lunch."[256]

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."[257] Courts have consistently held "every part of a statute be presumed to have some effect, and not be treated as meaningless unless absolutely necessary."[258] 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,

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[247] *United States v. United States Gypsum Co.*, 438 U.S. 422, 436 (1978).
[248] *See Staples*, 511 U.S. at 605 (citing *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253-254 (1992)).
[249] *Id.*
[250] *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).
[251] 18 U.S.C. § 1719.
[252] *See e.g., Fruitt 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.")
[253] *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).
[254] WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY (9th ed. 1990).
[255] Available at http://dictionary.reference.com/browse/TO.
[256] *Id.*
[257] *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).
[258] *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."[259]

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."[260] 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."[261] 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 15th 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, 85th Cong.) (adopted July 11, 1958) provides:

> [A]ny person in Government service should:
>
> . . .

[259] *Disabled in Action of Pennsylvania v. Southeastern Pennsylvania Transp. Authority*, 539 F.3d 199, 211 (3d Cir. 2008).
[260] 39 U.S.C. § 3215.
[261] 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."[262]

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.[263] Although the

[262] CSOC.CBR.00006136.
[263] *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.[264]

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."[265] 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."[266] 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."[267] The Code does not require that a landlord seek repossession of the apartment, nor does the apartment automatically become destabilized.[268] However, if a tenant is not using a rent stabilized apartment as a primary residence, a landlord has discretion not to renew the lease.[269] 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.[270]

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.[271] At that time, the rents for the other U-line units in 40 West 135th Street ranged from $430.84 through $503.42.[272] Likewise, when Representative Rangel moved out of apartment 10U in 2008, his monthly rent was $682.56.[273] In 2008, the rents for the other U-line apartments ranged from $637.22 through $902.42.[274] 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

[264] 9 NYCRR §§ 2531.3 and 2531.4.
[265] Garfinkle and Melnitsky Int. Tr. at 31.
[266] *Id.*
[267] *Id.* at 34.
[268] 9 NYCRR §§ 2520.6(u) and 2524.4(c).
[269] 9 NYCRR § 2524.4.
[270] Garfinkle and Melnitsky Int. Tr. at 32-33.
[271] *See* CSOC.CBR.00006136; *see also* CSOC.CBR.00029308.
[272] *See* CSOC.CBR.00029314.
[273] *Id.*
[274] *Id.*

Terrace,[275] reviewed Representative Rangel's tenant files and testified that he was paying the maximum allowable rent under New York's rent stabilization guidelines.[276] 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.[277]

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.[278] Maintenance requests for apartment 10U came from Rangel campaign staff, rather than from Representative Rangel himself.[279] 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.[280] 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.[281] Walter Swett indicated that everyone in the building knew who he was and that he worked for Representative Rangel.[282] Furthermore, Swett said that the building doormen knew who he was and allowed him to enter the building unannounced.[283] 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.[284]

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[275] Filippelli Int. Tr. 11/21/08 at 5-6.
[276] *Id.* at 26.
[277] Garfinkle Memo at 2. CSOC.CBR00026908-10.
[278] *See e.g.*, CSOC.CBR.00000997
[279] Interview Transcript of Darryl Rankin, November 18, 2008 (hereinafter Rankin Int. Tr. 11/18/08) at 22-23.
[280] Soundias Int. Tr. at 23.
[281] Keene Int. Tr. at 15; Soundias Int. Tr. at 7.
[282] Interview of Walter Swett (hereinafter Swett Int. Tr.) at 26-27.
[283] *Id.* at 26; 72.
[284] 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.[285]

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.[286] 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.[287] However, Robert Rissetto, Olnick's Vice President of Management and Leasing until from September 2001 until June 2007,[288] testified that he informed Rubler of Representative Rangel's non-conforming use of apartment 10U in either 2004 or 2005.[289] Rissetto 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.[290] 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 Rissetto'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,"[291] 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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[285] *See e.g.*, Soundias Int. Tr. at 17-19; *see also* Rankin Int. Tr. 5/14/09 at 57.
[286] Interview Transcript of Bruce Simon, December 8, 2008 (hereinafter Simon Int. Tr. 12/8/08) at 40.
[287] 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.
[288] Interview Transcript of Robert Rissetto (hereinafter Rissetto Int. Tr.) at 8-9.
[289] *Id.* at 83.
[290] *Id.* at 82-83.
[291] 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."[292] When asked if he would "have any reason to care," Rubler said, "No."[293] Rubler also told the investigative subcommittee that there may be economic reasons to allow the non-conforming use of a rent stabilized apartment.[294] 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."[295]

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."[296] 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."[297] Rankin believed that the latter example was permissible.[298]

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."[299] Rankin did not believe that running a business out of a rent-stabilized apartment was against the policies of Hampton Management.[300] 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

[292] Rubler Int. Tr. 5/15/09 at 34-35.
[293] *Id.* at 35.
[294] *Id.* at 34.
[295] *Id.*
[296] Rankin Int. Tr. 5/14/09 at 70-72.
[297] *Id.* at 61.
[298] *Id.*
[299] Rankin Int. Tr. 5/14/09 at 64-65.
[300] *Id.* at 68-69.

stabilized apartments which were not located on the first floor of the building."[301] 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."[302] 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."[303]

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.[304] 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."[305] 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."[306] 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.[307] Soundias was unsure of the average number of vacancies in 1996, when Representative Rangel

[301] *Id.* at 65.
[302] Rangel Int. Tr. at 207.
[303] *Id.* at 208.
[304] Rubler Int. Tr. 5/15/09 at 34-35.
[305] Rankin Int. Tr. 5/14/09 at 71-72.
[306] *Id.* at 75.
[307] Soundias Int. Tr. at 8-9.

began renting apartment 10U.[308] However, apartment 10U was vacant for at least four months before Representative Rangel first entered into a lease agreement to rent the unit.[309]

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."[310] 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."[311] There is however, "no requirement, legal requirement, that it be for a primary residence."[312] 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."[313] 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,"[314] 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."[315]

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.[316] 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."[317] 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."[318]

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.[319] If there are

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[308] *Id.* at 8.
[309] CSOC.CBR.00000004; CSOC.CBR.00000008.
[310] Rankin Int. Tr. 5/14/09 at 69-70.
[311] *Id.* at 70.
[312] *Id.*
[313] *Id.*
[314] *Id.* at 70.
[315] *Id.* at 70-71.
[316] *Id.*
[317] *Id.*
[318] *Id.*
[319] 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.[320] 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."[321] 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.[322] 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."[323] 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."[324] 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."[325] This conclusion is consistent with testimony provided by Olnick employee Jennifer Filippelli regarding the length of such litigation.[326] 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."[327] 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."[328]

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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[320] *Id.*
[321] *Id.*
[322] *Id.* at 12-13.
[323] *Id.*
[324] *Id.* at 13.
[325] *Id.*
[326] Interview Transcript of Jennifer Filippelli, December 8, 2008 (hereinafter Filippelli Int. Tr. 12/8/08) at 50-51.
[327] Garfinkle and Melnitsky Int. Tr. at 13.
[328] *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.[329] 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.[330] 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."[331] 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.[332]

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).[333] 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.[334] In 1984, Esposito "caused the payment of Representative Biaggi's round trip air fare to St. Maarten.[335] 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.[336] 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.[337]

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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[329] *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*
[330] House Comm. on Standards of Official Conduct, *In the Matter of Representative Robert L.F. Sikes*, H. Rep. 94-1364, 94th Cong., 2d Sess. at 3-46 (July 23, 1976).
[331] *Id.* at 3.
[332] 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).
[333] 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).
[334] *Id.* at 3-4.
[335] *Id.* at 4.
[336] *Id.* at 5.
[337] *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.'"[338] "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."[339]

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)."[340] 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."[341] 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.[342]

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."[343] Based on these facts, the Standards Committee concluded that the money was not a loan, but an "improper gift."[344] 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)."[345] HR 5838 was introduced in the House of Representatives on March 20, 1973.[346] 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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[338] 2008 *Senate Ethics Manual* at 58 (quoting Black's Law Dictionary 688 (6th ed. 1990)).
[339] *United States v. Sun-Diamond Growers of California*, 526 U.S. 398 (1999).
[340] 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).
[341] *Id.* at 4.
[342] *Id.* at 5.
[343] *Id.* at 4.
[344] *Id.*
[345] *Id.* at 6.
[346] *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."[347] 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.[348] 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." [349] 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."[350] These and other facts evidenced McFall's "desire to keep Park's and certain other similar contributions from public view."[351] 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."[352] 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.[353]

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,[354] but paid the maximum rent allowable for apartment 10U after it had remained vacant for months.[355] The fact that Olnick

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[347] 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).
[348] House Comm. on Standards of Official Conduct, *Korean Influence Investigation*, H. Rep. 95-1817, 95th Cong., 2d Sess. at 10 (1978).
[349] *Id.* at 26
[350] *Id.*
[351] *Id.* at 27.
[352] *Id.* at 30.
[353] *Id.* at 4.
[354] Garfinkle Memo at 2. CSOC.CBR.00026908-10.
[355] 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.[356] Representative Rangel said that "[o]n one occasion, a person who I cannot identify represented himself to be a representative of the owner."[357] 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."[358] Representative Rangel indicated "I don't think much progress has been made on that" because of opposition by the tenants' association.[359] 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.'"[360] The meeting was about five or ten minutes; Representative Rangel said, "I wouldn't know the guy if my life depended on it."[361]

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.[362] These meetings took place in Representative Rangel's congressional district office on 125th Street in Harlem, NY, not in Representative Rangel's campaign office in apartment 10U.[363] Representative Rangel "was one of a variety of community leaders that we met with to basically gauge opinion and build support for the proposal."[364] 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."[365] 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

[356] Rangel Int. Tr. at 213-14.
[357] *Id.* at 214.
[358] *Id.*
[359] *Id.*
[360] *Id.* at 214-15.
[361] *Id.* at 215.
[362] Rubler Int. Tr. 7/14/09 at 5.
[363] *Id.*
[364] *Id.* at 5-6.
[365] *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."[366] 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."[367] 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."[368]

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.[369] Capel had occasion to interact with Lenox Terrace General Manager Darryl Rankin because tenants were discussing going on strike.[370] Capel indicated that Rankin was "aggressive" compared to his predecessor Harold Griffel regarding evictions and other policies.[371] Capel noted that he didn't speak with Rankin "on a regular basis" but may have spoken to him regarding the proposed strike.[372] Tenants wanted "to

[366] *Id.*
[367] *Id.* at 7.
[368] *Id.* at 8.
[369] Interview of James Capel, July 30, 2009 (hereinafter Capel Int. Tr. 7/30/09) at 36-39.
[370] *Id.* at 50-51.
[371] *Id.* at 64.
[372] *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."[373]

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

[373] *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.[374]

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[375] or commercially reasonable[376] 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.[377] 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."[378] 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.[379] 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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[374] *89 Christopher, Inc. v. Joy*, 318 N.E.2d 776, 780 (N.Y. 1974).
[375] House Rule XXV, cl. 5(a)(3)(A); *see* 2008 *House Ethics Manual* at 38.
[376] 2008 *House Ethics Manual* at 68.
[377] 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.
[378] Garfinkle and Melnitsky Int. Tr. at 7.
[379] 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."[380] 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.[381]

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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[380] Code of Ethics for Government Service (72 Stat., Part 2, B12 (1958), H.Con. R. 175, 85th Cong.).
[381] 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.[382] 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.[383] 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.[384] 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.[385] 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.[386] 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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[382] *See* 26 U.S.C. § 4941; CSOC.CBR.00009867, 9869.
[383] CSOC.CBR.00009628-29; CSOC.CBR.00009636-38; CSOC.CBR.00009647-48.
[384] CSOC.CBR.00009592-05.
[385] CSOC.CBR.00003633 (letter to Gabe Pressman); CSOC.CBR.00003637 (letter to Veronica Kelly); CSOC.CBR.00003639 (letter to Luis Alvarez Vila).
[386] 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."[387] 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.[388] The public recognition the disqualified person received from the charitable act and the renaming of the charity, were considered "incidental" benefits under the regulations.[389] 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,"[390] 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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[387] 26 C.F.R. § 53.4941(d)-2(f)(2).
[388] Rev. Rul. 73-407, 1973-2 C.B. 383.
[389] *Id.*
[390] 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. [391]

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.[392] 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

[391] House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson*, H. Rep. 96-930, 96th Cong., 2d Sess. at 53 (1980).
[392] *Id.*

Committee on Ways and Means during the relevant period, lead these violations to constitute behavior which fails to "reflect creditably on the House."[393]

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 reproval. 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 reproval 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 reproval, 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.[394] 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 reproval, but not a reprimand.

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[393] House Rule XXIII, cl. 1.

[394] House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson*, H. Rep. 96-930, 96th Cong., 2d Sess. at 53 (1980).