

**UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT  
INVESTIGATIVE SUBCOMMITTEE**

\_\_\_\_\_)  
In the Matter of )  
 )  
REPRESENTATIVE MAXINE WATERS, )  
 )  
Respondent. )  
\_\_\_\_\_)

**ORDER**

This investigative subcommittee having considered Respondent's Motion to Dismiss, Memorandum of Points and Authorities, and the entire record herein, hereby finds:

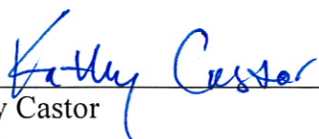
1. Count I of the Statement of Alleged Violation states facts that constitute a violation of the Code of Official Conduct, or another applicable law, rule, regulation, or standard of conduct.

2. Count II of the Statement of Alleged Violation states facts that constitute a violation of the Code of Official Conduct, or another applicable law, rules, regulation, or standard of conduct.

3. Count III of the Statement of Alleged Violation states facts that constitute a violation of the Code of Official Conduct, or another applicable law, rule, regulation, or standard of conduct. Accordingly,

It is by the Investigative Subcommittee this 15<sup>th</sup> day of July, 2010, ORDERED

That the Motion is DENIED.

  
\_\_\_\_\_  
Kathy Castor  
Chair

  
\_\_\_\_\_  
Mike Conaway  
Ranking Republican Member

Copies to:

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**UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT  
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In the Matter of )  
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Respondent. )  

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**MEMORANDUM IN SUPPORT OF ORDER**

On July 12, 2010, Respondent submitted to the Investigative Subcommittee a Motion to Dismiss the Statement of Alleged Violation adopted by the subcommittee on June 15, 2010,<sup>1</sup> and a Memorandum of Points and Authorities in Support of that motion.<sup>2</sup> By a separate Order, the Investigative Subcommittee denied Respondent’s Motion to Dismiss on July 15, 2010. Through this Memorandum the Investigative Subcommittee sets forth the bases for its Order denying Respondent’s motion.<sup>3</sup>

**STANDARD OF REVIEW**

Pursuant to Standards Committee Rule 19(f), upon the completion of its inquiry:

[A]n investigative subcommittee, by a majority vote of its members, may adopt a Statement of Alleged Violation if it determines that there is substantial reason to believe that a

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<sup>1</sup> Motion to Dismiss the Statement of Alleged Violations (hereinafter Motion).

<sup>2</sup> Memorandum of Points and Authorities in Support of Motion to Dismiss the Statement of Alleged Violations (hereinafter Mem. in Supp.)

<sup>3</sup> Respondent has requested an oral hearing on this matter and has requested “that the Committee acknowledge this request for an Oral Hearing in ruling on this motion and provide an explanation for such decision should it deny this request.” Motion at 2. Respondent made a similar request as part of her Motion for Bill of Particulars. Motion for Bill of Particulars at 4. In ruling on Respondent’s Motion for Bill of Particulars, the Investigative Subcommittee denied Respondent’s request for an oral hearing as unnecessary. Memorandum in Support of Order at 1, fn.1. Respondent has not cited any precedent or rule that might permit the Investigative Subcommittee to hold an oral hearing on this matter. However, even if there were such precedent, the Investigative Subcommittee would still deny the request in this case. An oral hearing would only be necessary if Respondent’s Motion raised an issue that the Investigative Subcommittee viewed to be a “close call.” Respondent has raised no such issue in this Motion. For this reason, the Investigative Subcommittee views such a hearing to be unnecessary, and thus Respondent’s request for an oral hearing is denied.

violation of the Code of Official Conduct, or of a law, rule, regulation, or other standard of conduct applicable to the performance of official duties or the discharge of official responsibilities by a Member . . . has occurred.<sup>4</sup>

Standards Committee Rule 22(c)(2) provides that a Respondent may file a motion to dismiss a Statement of Alleged Violation, which may be based on only two possible grounds: (1) that the Statement of Alleged Violation fails to state facts that constitute a violation of the Code of Official Conduct, or other applicable law, rule, regulation, or standard of conduct; or (2) that the Standards Committee lacks jurisdiction to consider the allegations contained in the Statement of Alleged Violation.

### **ANALYSIS**

For the reasons set forth below, the Investigative Subcommittee has found that the Statement of Alleged Violation adopted by the Investigative Subcommittee on June 15, 2010, states facts that constitute violations of the Code of Official Conduct or other applicable laws, rules, regulations, or standards of conduct and that the Standards Committee has jurisdiction over the allegations in the Statement of Alleged Violation. Therefore, Respondent's Motion to Dismiss is denied.

#### **I. The Statement of Alleged Violation Is At Best Only Superficially Similar to *Graves*.**

Respondent's primary argument in support of her Motion is that the Investigative Subcommittee's "analysis of both the legal standards and the underlying factual record at issue . . . is sharply divergent and significantly harsher than the decision rendered in Graves["]."<sup>5</sup> Respondent's reliance on superficial similarities between the facts in the Statement of Alleged Violation and the Standards Committee's decision in *In the Matter of Representative Sam Graves* (hereinafter *Graves*) betrays a fundamental misunderstanding of the Standards Committee's decision in *Graves* and the violations alleged in this case.

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<sup>4</sup> Standards Committee Rule 19(f).

<sup>5</sup> Mem. in Supp. at 2.

**A. The Factual Allegations in the Statement of Alleged Violation Are Not Similar to the Facts in *Graves*.**

While the facts as stated in the Statement of Alleged Violation in this matter share superficial similarities to the facts in *Graves*, there are several material factual differences between Respondent's case and *Graves*.

In *Graves*, the Standards Committee determined that Representative Graves, who was the Ranking Member of the Small Business Committee, did not violate either House Rule XXIII, clause 3, or paragraph 5 of the Code of Ethics for Government Service (Code of Ethics), when he invited a person, who was invested in the same renewable fuel cooperatives as Representative Graves' wife, to testify on behalf of an industry group before a Small Business Committee hearing regarding renewable fuels.<sup>6</sup> The Standards Committee further found no evidence that any party took any action as a result of, or as a follow up to, the witness' testimony.<sup>7</sup> As such, the sole allegation of any action at issue in *Graves* was the invitation to the witness to testify at the hearing.

In contrast, the Statement of Alleged Violation asserts that the day after the Department of Treasury and the Federal Housing Finance Agency took action that threatened the viability of OneUnited Bank (OneUnited), a bank on whose board Respondent's husband had previously served and in which Respondent's husband held a significant investment, Respondent arranged for a meeting between executives from OneUnited and officials at the Department of Treasury.<sup>8</sup> At the meeting between the OneUnited executives and Treasury officials, the executives asked Treasury for \$50 million in funding for OneUnited.<sup>9</sup> Treasury officials informed the executives that Treasury was not legally authorized to provide such funding.<sup>10</sup> Following this direct request for funding by OneUnited executives, Respondent determined that it would be ethically improper for her to advocate on behalf of OneUnited.<sup>11</sup> Despite previously instructing her Chief of Staff to work with the OneUnited executives, Respondent failed to instruct her Chief of Staff that he

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<sup>6</sup> *Graves*, at 18-20.

<sup>7</sup> *Id.* at 11.

<sup>8</sup> Statement of Alleged Violation at ¶¶ 1-10, 13-14.

<sup>9</sup> *Id.* at 11.

<sup>10</sup> *Id.* at ¶¶ 12.

<sup>11</sup> *Id.* at ¶¶ 20-22.

should not advocate on behalf of the bank.<sup>12</sup> Respondent’s Chief of Staff in fact continued to advocate on behalf of the bank, even after Respondent determined that she could not do so.<sup>13</sup> Respondent’s Chief of Staff’s assistance to OneUnited included attending meetings about a legislative solution to OneUnited’s financial problems with OneUnited executives, exchanging emails and telephone calls with the OneUnited executives about a legislative solution to OneUnited’s financial problems, and communicating with other congressional staffers regarding a legislative solution to OneUnited’s financial problems.<sup>14</sup> Following Respondent’s Chief of Staff’s continued assistance, OneUnited raised \$17 million in private funding, which the bank’s Chief Executive Officer thanked Respondent’s Chief of Staff for his assistance in raising.<sup>15</sup> OneUnited also received \$12,063,000 in funding from the Treasury.<sup>16</sup>

Given the material differences between the factual allegations in the Statement of Alleged Violation and the facts in *Graves*, Respondent’s heavy reliance on *Graves* is misplaced. Instead, the allegations in the Statement of Alleged Violation are more comparable to the facts in the Standards Committee’s report *In the Matter of a Complaint against Representative Robert L.F. Sikes* (hereinafter *Sikes*).<sup>17</sup> In *Sikes*, the Standards Committee found that Representative Sikes sought to purchase shares of a privately held bank “which he had been active in his official position in establishing[.]”<sup>18</sup> As a result, the Standards Committee found that Representative Sikes failed to observe:

The standard of ethical conduct . . . as is expressed in principle in Section 5 of the code of Ethics for Government Service, and which prohibits any person in Government service from accepting for “himself . . . benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties[.]”<sup>19</sup>

The Standards Committee further found that Representative Sikes sponsored legislation to remove a reversionary interest and restrictions on land in which he had a personal financial

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<sup>12</sup> *Id.* at ¶¶ 9, 20-23.

<sup>13</sup> *Id.* at ¶¶ 24-31.

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

<sup>15</sup> *Id.* at ¶ 36.

<sup>16</sup> *Id.* at ¶ 37.

<sup>17</sup> Comm. on Standards of Official Conduct, *In the Matter of a Complaint Against Representative Robert L.F. Sikes*, (hereinafter *Sikes*) H. Rep. 94-1364, 94<sup>th</sup> Cong., 2d Sess. (1976).

<sup>18</sup> *Id.* at 3.

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

interest.<sup>20</sup> As a result, the Standards Committee found that Representative Sikes failed to observe “[t]he standard of ethical conduct that should be observed by Members of the House, as is expressed in principle in the Code of Ethics for Government Service, and which prohibits conflicts of interests and the use of an official position for any personal benefit.”<sup>21</sup> The precedent in *Sikes* is not just consistent with the Statement of Alleged Violation, but in fact compelled its adoption.

The Investigative Subcommittee notes that despite Respondent’s assertion that *Graves* shares similarities to the allegations in the Statement of Alleged Violation, the facts in *Graves* are far more similar to the circumstances surrounding the 2007 public hearing of the Subcommittee on Oversight and Investigations of the House Committee on Financial Services, cited by Respondent as evidence of her disclosure of her interest in OneUnited.<sup>22</sup> Much like the hearing in *Graves*, the 2007 hearing was an oversight hearing of a subcommittee on which Respondent served.<sup>23</sup> The hearing did not address any specific legislation and did not result in any specific action, but instead was “designed to highlight the role of minority- and women-owned banks in the economy and to examine how Federal regulators and Congress can work together to support these financial institutions.”<sup>24</sup> An executive of OneUnited testified at the hearing, but as in *Graves*, the executive’s testimony was on behalf of an industry group, and did not seek anything for any individual bank.<sup>25</sup> Instead, the OneUnited executive’s testimony asked the subcommittee to “forc[e] the banking agencies” to fulfill their statutory duty to assist minority banks under the Financial Institutions Reform Recovery and Enforcement Act of 1989 (FIRREA) by: revising capital rules to account for unique issues facing minority banks; revising the Community Reinvestment Act rules to address the “particular environment in which minority banks operate;” and urging regulators to “consider the particular challenges facing minority institutions when making broad policy statements.”<sup>26</sup> As with the result in *Graves*, Respondent had properly disclosed her financial interest in OneUnited on her Financial Disclosure

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<sup>20</sup> *Id.* at 4

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

<sup>22</sup> Mem. in Supp. at 4 (citing *Preserving and Expanding Minority Banks: Hearing Before the Subcomm. On Oversight and Investigations of the H. Comm. On Financial Services*, 110<sup>th</sup> Cong. 21-22 (2007) (hereinafter 2007 Hearing)).

<sup>23</sup> 2007 Hearing.

<sup>24</sup> *Id.* at 1.

<sup>25</sup> *Id.* at 16-19, 72-73.

<sup>26</sup> *Id.* at 17-18.

Statements, and thus her participation at that hearing did not violate any relevant standards of conduct.

**B. The Application of the Relevant Legal Standards in the Statement of Alleged Violation Is Wholly Consistent with the Application of the Legal Standards in *Graves* and Other Relevant Precedent.**

Respondent asserts that the Statement of Alleged Violation “cannot be reconciled with this Committee’s precedent.”<sup>27</sup> Respondent essentially makes three arguments regarding the legal standards in the Statement of Alleged Violation. First, Respondent argues that *Graves* compels a finding that Respondent did not violate the applicable rules regarding conflict of interest.<sup>28</sup> Second, Respondent argues that the “conclusory” analysis of the actions by Representative Graves and his staff and the “disparate treatment afforded” Respondent shows that the Statement of Alleged Violation fails to provide sufficient “notice” to Respondent of the allegations against her.<sup>29</sup> Finally, Respondent argues that the Standards Committee’s analysis of the potential for financial gain for Representative Graves as a result of the actions of him and his staff demonstrates “contradictory analysis” in the Statement of Alleged Violation.<sup>30</sup> However, these arguments misstate the actual allegations in the Statement of Alleged Violation, misinterpret the legal standard in *Graves*, and ignore other relevant Standards Committee precedent.

*1. The Statement of Alleged Violation Does Not Assert Violations of Relevant Conflict of Interest Standards.*

Respondent asserts that she fully disclosed her interest in OneUnited which should “obviate[] . . . concerns about ‘conflict of interest.’”<sup>31</sup> Respondent further argues that, as in *Graves*, any benefit Respondent actually received would inure to Respondent as a member of a class of shareholders, which “would not be sufficient to establish an ethics violation[.]”<sup>32</sup>

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<sup>27</sup> Mem. in Supp. at 2.

<sup>28</sup> *Id.* at 3-7

<sup>29</sup> *Id.* at 7-10.

<sup>30</sup> *Id.* at 10-12.

<sup>31</sup> *Id.* at 3-4.

<sup>32</sup> *Id.* at 5-6.

However, Respondent's arguments regarding conflict of interest have no bearing on the Statement of Alleged Violation. This is because the Statement of Alleged Violation does not assert that Respondent's actions created a conflict of interest, or even an appearance of conflict of interest, which was the allegation in *Graves*. Instead, the Statement of Alleged Violation asserts that Respondent's actions and inactions: "created an appearance that Respondent was taking official action for Respondent's personal benefit" (Count I); were "inconsistent with the spirit of the House Rule applicable to receiving compensation by virtue of influence improperly exerted from the position of Respondent in Congress" (Count II); and were such that a "[r]easonable person could construe" those actions and inactions "as the dispensing of special favors or privileges to OneUnited, and accepting the preservation of the value of her husband's investment in OneUnited as a benefit under circumstances which might influence the performance of Respondent's governmental duties" (Count III). As such, Respondent's arguments about conflict of interest have no bearing on whether the Statement of Alleged Violation states facts that constitute violations of the Code of Official Conduct, or other applicable laws, rules, regulations, or standards of conduct.

2. *The Acts Taken by Respondent and Her Chief of Staff Are Not Comparable to the Acts Taken by Representative Graves and His Staff.*

Respondent cites to the Standards Committee's conclusion that Representative Graves' involvement with the selection of the witness was "not impermissible" and then asserts that "the SAV is silent on how exactly [Respondent's and her Chief of Staff's] actions constituted 'impermissible . . . involvement'" and further asserts that "the SAV [does not] allege that [Respondent] performed or had knowledge of any of her Chief of Staff's actions."<sup>33</sup>

However, Respondent's attempt to compare the allegations in the Statement of Alleged Violation to the facts in *Graves* is without merit.

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<sup>33</sup> *Id.* at 7-8.



- a. The Statement of Alleged Violation explains why the actions of Respondent and her Chief of Staff were improper.

Contrary to Respondent’s claims, the Statement of Alleged Violation is not “silent on how exactly” the actions of Respondent and her Chief of Staff “constituted ‘impermissible . . . involvement[.]’” To the contrary, the Statement of Alleged Violation plainly and concisely states that the actions by Respondent and Chief of Staff were improper because they “created an appearance that Respondent was taking official action for Respondent’s personal benefit[.]”

As the Standards Committee noted in *Graves*, the House recognizes that “some actual conflicts of interest are inevitable . . . and are not in themselves necessarily improper or unethical.”<sup>34</sup> Under House rules, a Member is not barred from taking an official action that may result in a personal benefit to the Member, if the potential for a personal benefit is incidental to the Member’s purpose in taking the action.<sup>35</sup> However, a Member may not take official action if a personal benefit is, or appears to be, one of the Member’s reasons for taking action.<sup>36</sup>

Under the Code of Ethics for Government Service (Code of Ethics),<sup>37</sup> a federal official, including a Member, should:

Never discriminate unfairly by 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.<sup>38</sup>

Because the Code of Ethics measures a Member’s conduct by “what might be construed by reasonable persons,” a Member may violate this provision even if the Member would have

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<sup>34</sup> See House Comm. on Standards of Official Conduct, *In the Matter of Representative Sam Graves*, (hereinafter *Graves*) H. Rep. 111-320, 111<sup>th</sup> Cong., 1st Sess. 15 (2009) (internal quotations and citations omitted).

<sup>35</sup> An official action that incidentally results in a personal benefit creates a real, but permissible conflict of interest. See *Graves*, at 15. This is distinguishable from official actions that appear to result in a personal benefit, but do not. *Id.* Official action that results in such an *appearance of a conflict of interest* is only precluded under very narrow circumstances. See e.g., House Rule XXVII, clause 4 (when a Member, officer or employee has an agreement for future employment or is negotiating for future employment, the Member, officer or employee must “recuse himself or herself from any matter in which there is a conflict of interest or an appearance of conflict of interest” related to such future employment).

<sup>36</sup> House Rule XXIII, clauses 2 and 3; Code of Ethics for Government Service, section 5.

<sup>37</sup> 72 Stat., Part 2, B12, H. Res. 175, 85<sup>th</sup> Cong. (adopted Jul. 11, 1958).

<sup>38</sup> Code of Ethics for Government Service, section 5.

taken the same official action without a potential personal benefit, if the Member's actions raise the appearance of impropriety.<sup>39</sup>

The House Rules also prohibit Members from “receiv[ing] compensation and . . . permit[ing] compensation to accrue to the beneficial interest of such individual from any source, the receipt of which would occur by virtue of influence improperly exerted from the position of such individual in Congress.”<sup>40</sup> A Member would violate this provision if the Member used the Member's “political influence, the influence of his position . . . to make pecuniary gains.”<sup>41</sup>

Moreover, “when considering the applicability of this provision to any activity they are considering undertaking,” Members “must also bear in mind that under a separate provision of the Code of Official Conduct (House Rule 23, cl.2), they are required to adhere to the spirit as well as the letter of the Rules of the House.”<sup>42</sup> House Rule XXIII, clause 2, was drafted to “provide the House the means to deal with infractions that rise to trouble it without burdening it with defining specific charges that would be difficult to state with precision.”<sup>43</sup> The practical effect of House Rule XXIII, clause 2, has been to provide a device for construing other provisions of the Code of Official Conduct and House Rules.<sup>44</sup> This rule has been interpreted to mean that a Member or employee may not do indirectly what the Member or employee would be barred from doing directly.<sup>45</sup> In other words, the House Rules should be read broadly, and a narrow technical reading of the House Rules should not overcome the “spirit” of the rules and the intent of the House in adopting the rules.<sup>46</sup>

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<sup>39</sup> Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, (hereinafter *Biaggi*) H. Rep. 100-56, 100<sup>th</sup> Cong. 2d Sess. 9 (Feb. 18, 1988) (“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 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. Accordingly, the Committee concluded that such improper appearance supports a determination that Representative Biaggi violated clause 5 of the Code of Ethics for Government Service.”).

<sup>40</sup> House Rule XXIII, clause 3.

<sup>41</sup> 114 *Cong. Rec.* 8807 (Apr. 3, 1968) (statement of Representative Price).

<sup>42</sup> 2008 *House Ethics Manual*, at 186.

<sup>43</sup> 114 *Cong. Rec.* 8778 (Apr. 3, 1968); *see also* 114 *Cong. Rec.* 8799 (statement of Representative Teague, member of the House Comm. on Standards of Official Conduct, 90<sup>th</sup> Cong.).

<sup>44</sup> 2008 *House Ethics Manual*, at 17.

<sup>45</sup> House Select Comm. on Ethics, *Advisory Opinion 4*, Rep. 95-1837, 61-62, 95<sup>th</sup> Cong., 2d Sess. (1979).

<sup>46</sup> *Id.* House Rule XXIII, clause 2, has not only been used as an aid to interpreting other House rules. For example, the Standards Committee has cited the violation of House Rule XXIII, clause 2, several times in recommending expulsion of Members for various reasons. *See e.g.*, House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. 96-1387 96<sup>th</sup> Cong., 2d Sess. 5 (1980) (Member convicted of bribery);

The Standards Committee applied these rules to Representative Graves' sole act of inviting a witness to testify on behalf of an industry association at an oversight hearing at which no specific piece of legislation was at issue.<sup>47</sup> The Standards Committee found that by this action Representative Graves did not violate House Rule XXIII, clause 3, because the witness "met all of the reasonable and objective criteria to testify at the hearing, Representative Graves' involvement with the selection of [the witness] was not improper."<sup>48</sup> The Standards Committee further noted that it had not "identified any evidence that Representative Graves received any benefit in connection with [the witness]'s testimony."<sup>49</sup> Similarly, the Standards Committee determined that Representative Graves did not violate paragraph 5 of the Code of Ethics, because the witness "met all of the reasonable and objective requirements the staff established for a witness . . . , Representative Graves' involvement in the witness selection process did not discriminate unfairly against other potential witnesses by dispensing a special favor to [the witness]."<sup>50</sup>

At the conclusion of its investigation, the Investigative Subcommittee applied the same rules related to taking action for personal benefit as it did to Representative Graves. However, in contrast to the limited finding of acts by Representative Graves and his staff, the Statement of Alleged Violation alleges that not only did Respondent invite OneUnited executives to meet with senior Treasury officials, during which meeting the executives requested money for OneUnited specifically, but following the meeting Respondent's Chief of Staff had multiple interactions with OneUnited executives regarding the bank's request to Treasury for funding.<sup>51</sup> The

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House Comm. on Standards of Official Conduct, *In the Matter of Representative Raymond F. Lederer*, H. Rep. 97-110 97<sup>th</sup> Cong., 1<sup>st</sup> Sess. 16 n.8 (1981) (Member convicted of bribery); *Biaggi*, at 7 (Member convicted of accepting illegal gratuities); House Comm. on Standards of Official Conduct, *In the Matter of Representative James A. Traficant, Jr.*, H. Rep. 107-594, 107<sup>th</sup> Cong., 2d Sess. Vols. I-VI (July 19, 2002) (Member convicted of conspiring to violate the bribery statute, accepting gratuities, obstructing justice, conspiring to defraud the United States, filing false income tax returns, and racketeering).

<sup>47</sup> *Graves* at 18-20.

<sup>48</sup> *Graves*, at 19.

<sup>49</sup> *Graves*, at 19.

<sup>50</sup> *Graves*, at 20.

<sup>51</sup> Respondent also asserts that the Statement of Alleged Violation does not make a distinction between actions taken on behalf of OneUnited and for the National Bankers Association (NBA) as a whole. However, the Statement of Alleged Violation does make such a distinction. The Statement of Alleged Violation asserts that "Respondent called then-Treasury Secretary Henry Paulson on or around September 8, 2008, and requested a meeting on behalf of NBA, which OneUnited was a member of, to discuss the impact of the Conservatorship on minority banks." Statement of Alleged Violation at ¶ 7. The Statement of Alleged Violation asserts that all other actions, other than the initial request for a meeting with Treasury, were on behalf of OneUnited, not the NBA. *Id.* at 24-31.

Investigative Subcommittee concluded that these actions were impermissible because they “created an appearance that Respondent was taking official action for Respondent’s personal benefit[.]”<sup>52</sup>

- b. The Statement of Alleged Violation explains why Respondent’s actions and inactions violated the relevant standards of conduct.

Respondent accurately asserts that the Statement of Alleged Violation does not allege that Respondent had knowledge of any of her Chief of Staff’s actions. However, such an allegation would be irrelevant to allegations in the Statement of Alleged Violation. The Statement of Alleged Violation plainly states that “Respondent is responsible for the oversight and administration of her congressional office”<sup>53</sup> and that “Respondent is responsible for the conduct and actions of members of her staff, especially her Chief of Staff, when members of her staff are acting within the scope and course of their employment.”<sup>54</sup>

Moreover, these allegations are wholly consistent with Standards Committee precedent finding that Members are responsible for the oversight and administration of their congressional offices.<sup>55</sup> Under longstanding House precedent, “Members are responsible for the knowledge and acts acquired or committed by their staff within the course and scope of their employment.”<sup>56</sup> “Many times Members act through the actions of their staff and, therefore, should be held liable for those actions in certain circumstances.”<sup>57</sup> This is because “it would not well serve the House as an institution to allow its Members to escape responsibility by delegating authority to their staff to take actions and hide behind their lack of knowledge of the facts surrounding these actions.”<sup>58</sup>

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<sup>52</sup> Statement of Alleged Violation at 48.

<sup>53</sup> Statement of Alleged Violation at ¶¶ 45, 53, 59.

<sup>54</sup> *Id.* at ¶¶ 46, 54, 60.

<sup>55</sup> *Gingrich*, at 59-60.

<sup>56</sup> See House Comm. on Standards of Official Conduct, *In the Matter of the Investigation into Officially Connected Travel of House Members to Attend the Carib News Foundation Multinational Business Conferences in 2007 and 2008 (hereinafter Carib News)*, H. Rep. 111-422, 111<sup>th</sup> Cong., 2d Sess 122 (2010).

<sup>57</sup> *Id.* at 126.

<sup>58</sup> *Id.* at 125-126. Respondent asserts that the Standards Committee “cleared Representative Graves, in part, because his involvement was ‘limited’ and his staff performed the bulk of the work at issue.” Mem. in Supp. at 9. However, Representative Graves was not “cleared” because of his limited involvement. To the contrary, the Standards Committee found that Representative Graves did not violate any relevant standard of conduct because his staff’s actions in selecting the witness were proper. *Graves*, at 19 (“the Standards Committee concluded that because [the

For example, in *Gingrich*, the Standards Committee held Representative Gingrich responsible for letters mailed by his staff in violation of the Franking Privilege despite his lack of personal knowledge.<sup>59</sup> The Standards Committee concluded that “Representative Gingrich was remiss in his oversight and administration of his congressional office which gave rise to the initiation of the subject improper correspondence.”<sup>60</sup>

Similarly, in *Shuster*, the Standards Committee stated, “Members of the House are ultimately responsible for ensuring their offices function in accordance with applicable standards. In this regard, Members must not only ensure that their offices comply with appropriate standards, but also take account in the manner in which their actions *may be perceived*.”<sup>61</sup> Representative Shuster’s former chief of staff, after she left his employment, continued to provide advisory and scheduling services to the House office. Representative Shuster condoned her conduct through his inaction.<sup>62</sup>

In *Murphy*, Representative Murphy’s response to the allegations that he allowed a law firm to use House supplies and property was that he did not know or did not approve of the use.<sup>63</sup> Counsel to the Select Committee argued that “a Member must bear responsibility for the actions which are under his ultimate authority and should not escape liability by attempting to blame his staff.”<sup>64</sup> The Committee agreed with this position and held that Representative Murphy was “responsible to the House for assuring that resources provided in support of his official duties are applied to the proper purposes,” regardless of his claim that he had no knowledge of their use.<sup>65</sup>

More recently, in *Carib News*, the investigative subcommittee concluded that Representative Rangel acted when he attended a conference through his chief of staff’s actions of completing and signing the forms necessary for the approval to attend the conference.<sup>66</sup> The investigative subcommittee explained that Representative Rangel delegated to his chief of staff

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witness] met all the reasonable and objective criteria to testify at the hearing, Representative Graves involvement with the selection of [the witness] was not impermissible[.]”).

<sup>59</sup> *Gingrich*, at 56- 60, and 78.

<sup>60</sup> *Gingrich*, at 60.

<sup>61</sup> *Shuster*, at 49 (emphasis added).

<sup>62</sup> *Id.* at 3F-3G.

<sup>63</sup> *Murphy*, at 4.

<sup>64</sup> *Id.* at 85.

<sup>65</sup> *Murphy*, at 4.

<sup>66</sup> *Carib News*, at 126.

the authority to complete and sign the traveler forms on his behalf, and therefore could be held responsible for the knowledge his chief of staff had when completing the forms.<sup>67</sup> Because of this, the investigative subcommittee found that Representative Rangel knowingly accepted an impermissible gift of travel and that he failed to comply with the House travel regulation's requirement when he failed to indicate certain additional sponsors on his post-travel disclosures.<sup>68</sup>

3. *The Statement of Alleged Violation Asserts that the Actions of Respondent and Her Chief of Staff Appeared to be for Her Benefit, Not that the Actions Actually Benefitted Her.*

With regard to the potential personal gain for Respondent from the actions by Respondent and her staff, Respondent points to the statement in *Graves* “that Representative Graves never ‘actually received a financial benefit’ from his co-investor’s testimony” and then asserts that Respondent “received no benefit from her alleged actions” because “the SAV fails to acknowledge that on October 31, 2008, OneUnited received a final private sector investment which rendered the bank ‘Adequately Capitalized,’ and eligible for so-called TARP funds.”<sup>69</sup> Respondent further asserts that Respondent could not have benefitted because “the value of [Respondent’s] husband’s stock was . . . unchanged after OneUnited received the TARP funds in December.”<sup>70</sup>

However, the key finding in *Graves* was not that Representative Graves did not benefit from the testimony of the witness but that “neither Representative Graves nor Mrs. Graves *could* derive a financial benefit from [the witness]’s testimony.”<sup>71</sup> For this reason, whether or not OneUnited received private investment in late October is irrelevant to the allegation that “Respondent’s Chief of Staff’s continued involvement” in September and early October “in assisting OneUnited created an appearance that Respondent was taking official action for Respondent’s personal benefit[.]”<sup>72</sup> The Statement of Alleged Violation does not assert that

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<sup>67</sup> *Id.*

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

<sup>69</sup> Mem. in Supp. at 11. Of course, the Statement of Alleged Violation does acknowledge OneUnited’s receipt of private investment. Statement of Alleged Violation, ¶ 35.

<sup>70</sup> Mem. in Supp. at 11.

<sup>71</sup> *Graves* at 17 (emphasis added).

<sup>72</sup> Statement of Alleged Violation, ¶ 48.

OneUnited was ultimately assisted by Respondent's Chief of Staff's actions. Instead, the Statement of Alleged Violation asserts that the appearance of acting for Respondent's narrow financial interest was by itself improper.

Furthermore, the fact that the value of Respondent's shares of OneUnited stock did not change after receipt of TARP funds does not show that Respondent did not benefit from OneUnited's receipt of TARP funds. This retention of value is the benefit Respondent received. As the Statement of Alleged Violation states, "the preservation of the value of Respondent's husband's investment in OneUnited would personally benefit Respondent."<sup>73</sup> The Investigative Subcommittee concluded that OneUnited was under eminent threat of failure, and that Representative Waters, through her husband, had a significant financial interest in OneUnited, which would have been worthless if the bank had failed.<sup>74</sup> For this reason, when Respondent's Chief of Staff took actions that a reasonable person could interpret as being directed at helping to preserve Respondent's financial interest, this created the appearance that Respondent was improperly using official resources for her own narrow financial interest.<sup>75</sup>

## **II. The Statement of Alleged Violation States Facts that Constitute Violations of the Relevant Legal Standards.**

After her reliance on a misplaced reading of *Graves*, most of Respondent's remaining arguments do not assert that the Statement of Alleged Violation fails to state facts that constitute violations of the Code of Official Conduct, or other applicable laws, rules, regulations, or standards of conduct. Instead, Respondent asserts that she believes she can disprove the facts as stated. Of course, such an argument is not a proper basis for a motion to dismiss. A motion to dismiss merely assesses whether a Statement of Alleged Violation states facts that, if proven, would constitute a violation of the Code of Official Conduct, or any other applicable laws, rules, regulations, or standards of conduct. It is only when a Statement of Alleged Violation is heard

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<sup>73</sup> Statement of Alleged Violation ¶ 44.

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

<sup>75</sup> Respondent also asserts that the Investigative Subcommittee's analysis of the value of the OneUnited shares as a percentage of Respondent's and her husband's combined net worth is improper because the Standards Committee did not conduct a similar analysis in *Graves*. Mem. in Supp. at 6. However, such an analysis was unnecessary in *Graves* because the Standards Committee found that it was not possible for Representative Graves and his wife to benefit from the witness' testimony. See *Graves* at 17. Because the Investigative Subcommittee determined that in September 2008 Respondent faced the eminent threat that she and her husband would lose all value in their OneUnited shares, an analysis of Respondent's and her husband's net worth was necessary in the instant case.

by an adjudicatory subcommittee that the facts supporting the Statement of Alleged Violation are weighed against any evidence Respondent puts forward. However, even if Respondent's assertions were the proper basis of a motion to dismiss, she has not presented any facts that disprove any material allegation in the Statement of Alleged Violation.

**A. The Statement of Alleged Violation States Facts That Constitute a Violation of Clause 1 of the House Rule XXIII.**

The Statement of Alleged Violation sets forth facts that constitute a violation of clause 1 of House Rule XXIII relating to Respondent's failure in the oversight and administration of her staff that resulted in actions that did not reflect creditably on the House.

Under House Rule XXIII, clause 1: "A Member, Delegate, Resident Commissioner, officer, or employee of the House shall behave at all times in a manner that shall reflect creditably on the House." Historically, the Standards Committee has invoked clause 1 to review conduct that encompasses violations of law and abuses of a Member's official position.<sup>76</sup> "Clause 1 was adopted in part, so that the Committee, in applying the Code, would retain the ability to deal with any given act or accumulation of acts which, in the judgment of the committee, are severe enough to reflect discredit on the Congress."<sup>77</sup>

Count I of the Statement of Alleged Violation contains a plain and concise statement of the alleged facts that constitute behavior that fails to reflect creditably on the House in violation of clause 1 of House Rule XXIII. Count I of the Statement of Alleged Violation asserts that "Respondent's Chief of Staff's continued involvement in assisting OneUnited created an appearance that Respondent was taking official action for Respondent's personal benefit, which did not reflect creditably on the House."<sup>78</sup> Count I asserts that "Respondent's failure to instruct her Chief of Staff to refrain from assisting OneUnited after Respondent realized that she 'should not be involved' violated" House Rule XXIII, clause 1.<sup>79</sup>

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<sup>76</sup> 2008 *House Ethics Manual* at 16.

<sup>77</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative E.G. "Bud" Shuster*, H. Rep. 106-979, 106<sup>th</sup> Cong., 2d Sess (2000).

<sup>78</sup> Statement of Alleged Violation, ¶ 48.

<sup>79</sup> *Id.*, at ¶ 49.



Respondent does not dispute that Respondent's Chief of Staff took the actions alleged in the Statement of Alleged Violation. Instead, Respondent argues that the "lone allegation specific to [Respondent], that she should have instructed her Chief of Staff to refrain from assisting OneUnited, is refuted by the record."<sup>80</sup> As noted previously, the existence of evidence that does not support the allegations in the Statement of Alleged Violation is not a proper basis of a motion to dismiss. However, even it was, Respondent does not assert any evidence that refutes the allegations that Respondent failed to instruct her Chief of Staff not to advocate on behalf of OneUnited.

Respondent asserts two pieces of evidence in support of her argument that the allegation is refuted by the record. First, Respondent cites to the Memorandum of Interview of the Office of Congressional Ethics' interview of Respondent's Chief of Staff, in which Respondent's "Chief of Staff told OCE that [Respondent] had spoken to Representative Frank and subsequently told her Chief of Staff not to worry about OneUnited."<sup>81</sup> Second, Respondent cites to the transcript of the interview of Respondent's Chief of Staff by the investigative subcommittee counsel, in which "[h]e also informed this Committee in September of [sic] October of 2008 '[Respondent] appeared to be very . . . comfortable that . . . whatever the issue was, if there was to be a resolution, that Barney would take . . . a look at it and make a decision . . . as the Chairman, whether or not it was something he wanted to get involved with.'"<sup>82</sup>

These two pieces of evidence do not refute any allegation in the Statement of Alleged Violation. At best, this evidence suggests that Respondent generally discussed her conversation with Representative Frank with her Chief of Staff and that Respondent told her Chief of Staff that Representative Frank would be deciding whether or not to get involved. Indeed, contrary to Respondent's paraphrase, the Office of Congressional Ethics' Memorandum of Interview does not state that Respondent "told her Chief of Staff not to worry about OneUnited." Instead, the Memorandum of Interview states that Respondent told her Chief of Staff "that he need not work on the minority bank matters" which he "interpreted . . . to mean that he need not work on NBA matters that day."

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<sup>80</sup> Mem. in Supp. at 13.

<sup>81</sup> *Id.* at 9.

<sup>82</sup> *Id.*

Respondent's Chief of Staff's general statements that Respondent was comfortable that Representative Frank was looking at minority bank issues and that Respondent told her Chief of Staff not to work on minority banking issues on one specific day have no bearing on whether Respondent instructed her Chief of Staff not to advocate on behalf of OneUnited and are not sufficient to relieve Respondent of responsibility for the oversight and administration of her office.

Respondent also asserts that "the SAV's 'preservation of value' allegation [does not] stand up under scrutiny."<sup>83</sup> Once again, Respondent does not assert that the allegations in the Statement of Alleged Violation do not state a violation, but only that Respondent believes that there is evidence that is contrary to the assertion in the Statement of Alleged Violation.

The Statement of Alleged Violation asserts that "OneUnited sought to obtain funding from Treasury and would have failed if it did not receive capital."<sup>84</sup> The Statement of Alleged Violation further asserts that "[i]f OneUnited had not received this funding, Respondent's husband's financial interest in OneUnited would have been worthless."<sup>85</sup> Respondent does not deny that OneUnited sought funding from Treasury. Nor does Respondent deny that OneUnited would have failed if it did not receive capital. Finally, Respondent does not deny that her husband's financial interest in OneUnited would have been worthless if OneUnited had not received funding.

Instead, Respondent makes the irrelevant argument that "the SAV fails to acknowledge that on October 31, 2008, OneUnited received a final private sector investment which rendered the bank 'Adequately Capitalized,' and eligible for so-called TARP funds."<sup>86</sup> As stated previously, whether or not OneUnited received private investment in late October has no bearing as to whether "Respondent's Chief of Staff's continued involvement" in September and early October "in assisting OneUnited created an appearance that Respondent was taking official action for Respondent's person benefit[.]"<sup>87</sup> The Statement of Alleged Violation does not assert that OneUnited was ultimately saved from failure by Respondent's Chief of Staff's actions.

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<sup>83</sup> Mem. in Supp. at 13.

<sup>84</sup> Statement of Alleged Violation, ¶ 41.

<sup>85</sup> *Id.* at 44.

<sup>86</sup> Mem. in Supp. at 11.

<sup>87</sup> Statement of Alleged Violation, ¶ 48.

Instead, the Statement of Alleged Violation asserts that the appearance of acting in Respondent's narrow financial interest did not reflect creditably on the House.

**B. The Statement of Alleged Violation States Facts that Constitute a Violation of the Spirit of clause 3 of House Rule XXIII.**

The Statement of Alleged Violation sets forth facts that constitute a violation the spirit of clause 3 of House Rule XXIII relating to Respondent's failure in the oversight and administration of her staff that resulted in a violation of the spirit of the prohibition on receiving compensation from the use of Respondent's position in Congress.

House Rule XXIII, clause 3, prohibits Members from "receiv[ing] compensation and . . . permit[ing] compensation to accrue to the beneficial interest of such individual from any source, the receipt of which would occur by virtue of influence improperly exerted from the position of such individual in Congress."<sup>88</sup> A Member would violate this provision if the Member used the Member's "political influence, the influence of his position . . . to make pecuniary gains."<sup>89</sup> Moreover, pursuant to House Rule XXIII, clause 2, Members must adhere to the spirit as well as the letter of the House XXIII, clause 3.<sup>90</sup>

Respondent argues that Count II of the Statement of Alleged Violation fails to state facts that constitute a violation of House Rule XXIII, clause 2, because Count II "plainly fails to establish both how [Respondent] improperly used her official position and/or derived any direct pecuniary benefit from her actions."<sup>91</sup> However, as stated previously, when Respondent invited OneUnited executives to meet with senior Treasury officials, during which meeting the executives requested money for OneUnited specifically, and when following the meeting Respondent's Chief of Staff had multiple interactions with OneUnited executives regarding the bank's request to Treasury for funding, Respondent "created an appearance that Respondent was taking official action for Respondent's personal benefit[.]"<sup>92</sup> This use of official resources violated the spirit of the House Rule that prohibits "receiv[ing] compensation and . . . permit[ing]

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<sup>88</sup> House Rule XXIII, clause 3.

<sup>89</sup> 114 *Cong. Rec.* 8807 (Apr. 3, 1968) (statement of Representative Price).

<sup>90</sup> 2008 *House Ethics Manual*, at 186.

<sup>91</sup> *Id.* at 14.

<sup>92</sup> Statement of Alleged Violation at 48.

compensation to accrue to the beneficial interest of such individual from any source, the receipt of which would occur by virtue of influence improperly exerted from the position of such individual in Congress.”

**C. The Statement of Alleged Violation States Facts that Constitute a Violation of Paragraph 5 of the Code of Ethics for Government Service.**

The Statement of Alleged Violation sets forth facts that constitute a violation of paragraph 5 of the Code of Ethics relating to Respondent’s failure in the oversight and administration of her staff that resulted in actions that reasonable persons could construe as Respondent dispensing special favors or privileges to OneUnited and accepting the preservation of the value of her husband’s investment in OneUnited as a benefit under circumstances which might influence the performance of her governmental duties.

House rules and other standards governing Members’ conduct prohibit a Member from using, or appearing to use, his official position for personal benefit.<sup>93</sup>

Under the Code of Ethics,<sup>94</sup> a federal official, including a Member, should:

Never discriminate unfairly by 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.<sup>95</sup>

Because the Code of Ethics measures a Member’s conduct by “what might be construed by reasonable persons,” a Member may violate this provision even if the Member would have taken the same official action without a potential personal benefit, if the Member’s actions raise the appearance of impropriety.<sup>96</sup>

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<sup>93</sup> House Rule XXIII, clauses 2 and 3; Code of Ethics for Government Service, paragraph 5; *see also Sikes*, at 3; 2008 *House Ethics Manual*, at 187 (“One of the purposes of the rules and standards [of conduct relevant to use of a Member’s office for personal benefit] is to preclude conflict of interest issues.”).

<sup>94</sup> 72 Stat., Part 2, B12, H. Res. 175, 85<sup>th</sup> Cong. (adopted Jul. 11, 1958).

<sup>95</sup> Code of Ethics for Government Service, paragraph 5.

<sup>96</sup> *Biaggi*, at 9 (“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 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. Accordingly, the Committee

Respondent argues that Count III of the Statement of Alleged Violation fails to state facts that constitute a violation of paragraph 5 of the Code of Ethics, because Count III “does not establish how Respondent or her Chief of Staff ‘discriminate[d] unfairly by dispensing of special favors or privileges’ to OneUnited or anyone else.”<sup>97</sup> Respondent further argues that the Statement of Alleged Violation “ignore[s] [Respondent’s] long-standing interest and involvement in matters concern minority banking issue[s], including members of the NBA.”<sup>98</sup>

As stated previously, the Statement of Alleged Violation is consistent with, and compelled by, the Standards Committee’s precedent in *Sikes*, in which the Standards Committee found that Representative Sikes violated paragraph 5 of the Code of Ethics when he sought to purchase shares of a privately held bank “which he had been active in his official position in establishing[.]”<sup>99</sup> The Standards Committee further found that Representative Sikes violated paragraph 5 of the Code of Ethics when he sponsored legislation to remove a reversionary interest and restrictions on land in which he had a personal financial interest.<sup>100</sup> In a similar manner, the Statement of Alleged Violation asserts that Respondent’s Chief of Staff’s continuing assistance to OneUnited, created a circumstance that “[r]easonable persons could construe . . . as dispensing special favors or privileges to OneUnited[.]”<sup>101</sup>

Moreover, the Statement of Alleged Violation does not ignore Respondent’s history of working on minority banking issues. To the contrary, the Statement of Alleged Violation specifically notes that “Respondent has a long history of assisting small and minority owned banks generally, and NBA in particular.”<sup>102</sup> However, the Code of Ethics measures a Member’s conduct by “what might be construed by reasonable persons[.]”<sup>103</sup> Thus, Respondent’s history of working on minority banking issues does not alter the conclusion. A Member may violate paragraph 5 of the Code of Ethics even if the Member would have taken the same official action

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concluded that such improper appearance supports a determination that Representative Biaggi violated clause 5 of the Code of Ethics for Government Service.”).

<sup>97</sup> *Id.* at 14-15.

<sup>98</sup> *Id.* at 15.

<sup>99</sup> *Sikes* at 3.

<sup>100</sup> *Id.* at 4

<sup>101</sup> Statement of Alleged Violation at ¶ 62.

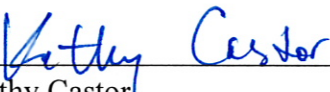
<sup>102</sup> *Id.* at 6.

<sup>103</sup> Codes of Ethics, paragraph 5.

without a potential personal benefit, if the Member's actions raise the appearance of impropriety.<sup>104</sup>

### CONCLUSION

In light of the foregoing, the Investigative Subcommittee finds that Respondent's Motion to Dismiss does not state adequate grounds to support dismissal of any counts in the Statement of Alleged Violation. Accordingly, the Respondent's Motion to Dismiss is denied.

  
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Kathy Castor  
Chair

  
\_\_\_\_\_  
Mike Conaway  
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<sup>104</sup> *Biaggi*, at 9 (“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 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. Accordingly, the Committee concluded that such improper appearance supports a determination that Representative Biaggi violated clause 5 of the Code of Ethics for Government Service.”).