ONE HUNDRED ELEVENTH CONGRESS

U.S. House of Representatives

COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT
Washington, DC 20515–6328

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

November 8, 2010

Representative Zoe Lofgren, Chair
Committee on Standards of Official Conduct
U.S. House of Representatives
The Capitol, HT-2
Washington, DC 20515

Re: In the Matter of Representative Charles B. Rangel

Dear Chair Lofgren:

Enclosed please find Committee counsel's Notice of Motion and accompanying Affirmation.

Sincerely,

R. Blake Chisam
Staff Director and Chief Counsel

cc: Representative Charles B. Rangel
Representative Michael T. McCaul, Ranking Republican Member

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT
ADJUDICATORY SUBCOMMITTEE

In the Matter of

REPRESENTATIVE CHARLES B. RANGEL,

Respondent.
_____/

NOTICE OF MOTION

MADAM CHAIR:

PLEASE TAKE NOTICE, that upon the annexed affirmation of R. Blake Chisam, Chief Counsel to the Committee on Standards of Official Conduct (hereinafter "Committee"), counsel for the Committee in the above-captioned matter, the undersigned will move the adjudicatory subcommittee in the above-captioned matter, at Room 1310, Longworth House Office Building, Washington, D.C., on the 15th day of November, 2010, at 9:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, as follows:

I. MOTION FOR DETERMINATION THAT THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT WITH RESPECT TO COUNT I OF THE STATEMENT OF ALLEGED VIOLATION IN THE ABOVE-CAPTIONED MATTER, THAT COMMITTEE COUNSEL IS ENTITLED TO A DETERMINATION AS TO WHETHER COUNT I OF THE STATEMENT OF ALLEGED VIOLATION HAS BEEN PROVEN AS A MATTER OF LAW AND THAT THE MATTER SHALL BE COMMITTED AS SOON AS PRACTICABLE TO THE ADJUDICATORY SUBCOMMITTEE FOR A DETERMINATION BY A MAJORITY VOTE OF ITS MEMBERS AS TO WHETHER COUNT I OF THE STATEMENT OF ALLEGED VIOLATION HAS BEEN PROVED;

II. MOTION FOR DETERMINATION THAT THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT WITH RESPECT TO COUNT II OF THE STATEMENT OF ALLEGED VIOLATION IN THE ABOVE-CAPTIONED MATTER, THAT COMMITTEE COUNSEL IS ENTITLED TO A DETERMINATION AS TO WHETHER COUNT II OF THE STATEMENT OF

ALLEGED VIOLATION HAS BEEN PROVEN AS A MATTER OF LAW AND THAT THE MATTER SHALL BE COMMITTED AS SOON AS PRACTICABLE TO THE ADJUDICATORY SUBCOMMITTEE FOR A DETERMINATION BY A MAJORITY VOTE OF ITS MEMBERS AS TO WHETHER COUNT II OF THE STATEMENT OF ALLEGED VIOLATION HAS BEEN PROVED;

III. MOTION FOR DETERMINATION THAT THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT WITH RESPECT TO COUNT III OF THE STATEMENT OF ALLEGED VIOLATION IN THE ABOVE-CAPTIONED MATTER, THAT COMMITTEE COUNSEL IS ENTITLED TO A DETERMINATION AS TO WHETHER COUNT III OF THE STATEMENT OF ALLEGED VIOLATION HAS BEEN PROVEN AS A MATTER OF LAW AND THAT THE MATTER SHALL BE COMMITTED AS SOON AS PRACTICABLE TO THE ADJUDICATORY SUBCOMMITTEE FOR A DETERMINATION BY A MAJORITY VOTE OF ITS MEMBERS AS TO WHETHER COUNT III OF THE STATEMENT OF ALLEGED VIOLATION HAS BEEN PROVED;

IV. MOTION FOR DETERMINATION THAT THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT WITH RESPECT TO COUNT IV OF THE STATEMENT OF ALLEGED VIOLATION IN THE ABOVE-CAPTIONED MATTER, THAT COMMITTEE COUNSEL IS ENTITLED TO A DETERMINATION AS TO WHETHER COUNT IV OF THE STATEMENT OF ALLEGED VIOLATION HAS BEEN PROVEN AS A MATTER OF LAW AND THAT THE MATTER SHALL BE COMMITTED AS SOON AS PRACTICABLE TO THE ADJUDICATORY SUBCOMMITTEE FOR A DETERMINATION BY A MAJORITY VOTE OF ITS MEMBERS AS TO WHETHER COUNT IV OF THE STATEMENT OF ALLEGED VIOLATION HAS BEEN PROVED;

V. MOTION FOR DETERMINATION THAT THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT WITH RESPECT TO COUNT V OF THE STATEMENT OF ALLEGED VIOLATION IN THE ABOVE-CAPTIONED MATTER, THAT COMMITTEE COUNSEL IS ENTITLED TO A DETERMINATION AS TO WHETHER COUNT V OF THE STATEMENT OF ALLEGED VIOLATION HAS BEEN PROVEN AS A MATTER OF LAW AND THAT THE MATTER SHALL BE COMMITTED AS SOON AS PRACTICABLE TO THE ADJUDICATORY SUBCOMMITTEE FOR A DETERMINATION BY A MAJORITY VOTE OF ITS MEMBERS AS TO WHETHER COUNT V OF THE STATEMENT OF ALLEGED VIOLATION HAS BEEN PROVED;

VI. MOTION FOR DETERMINATION THAT THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT WITH RESPECT TO COUNT VI OF THE STATEMENT OF ALLEGED VIOLATION IN THE ABOVE-CAPTIONED MATTER, THAT COMMITTEE COUNSEL IS ENTITLED TO A

DETERMINATION AS TO WHETHER COUNT VI OF THE STATEMENT OF ALLEGED VIOLATION HAS BEEN PROVEN AS A MATTER OF LAW AND THAT THE MATTER SHALL BE COMMITTED AS SOON AS PRACTICABLE TO THE ADJUDICATORY SUBCOMMITTEE FOR A DETERMINATION BY A MAJORITY VOTE OF ITS MEMBERS AS TO WHETHER COUNT VI OF THE STATEMENT OF ALLEGED VIOLATION HAS BEEN PROVED;

VII. MOTION FOR DETERMINATION THAT THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT WITH RESPECT TO COUNT VII OF THE STATEMENT OF ALLEGED VIOLATION IN THE ABOVE-CAPTIONED MATTER, THAT COMMITTEE COUNSEL IS ENTITLED TO A DETERMINATION AS TO WHETHER COUNT VII OF THE STATEMENT OF ALLEGED VIOLATION HAS BEEN PROVEN AS A MATTER OF LAW AND THAT THE MATTER SHALL BE COMMITTED AS SOON AS PRACTICABLE TO THE ADJUDICATORY SUBCOMMITTEE FOR A DETERMINATION BY A MAJORITY VOTE OF ITS MEMBERS AS TO WHETHER COUNT VII OF THE STATEMENT OF ALLEGED VIOLATION HAS BEEN PROVED;

VIII. MOTION FOR DETERMINATION THAT THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT WITH RESPECT TO COUNT VIII OF THE STATEMENT OF ALLEGED VIOLATION IN THE ABOVE-CAPTIONED MATTER, THAT COMMITTEE COUNSEL IS ENTITLED TO A DETERMINATION AS TO WHETHER COUNT VIII OF THE STATEMENT OF ALLEGED VIOLATION HAS BEEN PROVEN AS A MATTER OF LAW AND THAT THE MATTER SHALL BE COMMITTED AS SOON AS PRACTICABLE TO THE ADJUDICATORY SUBCOMMITTEE FOR A DETERMINATION BY A MAJORITY VOTE OF ITS MEMBERS AS TO WHETHER COUNT VIII OF THE STATEMENT OF ALLEGED VIOLATION HAS BEEN PROVED;

IX. MOTION FOR DETERMINATION THAT THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT WITH RESPECT TO COUNT IX OF THE STATEMENT OF ALLEGED VIOLATION IN THE ABOVE-CAPTIONED MATTER, THAT COMMITTEE COUNSEL IS ENTITLED TO A DETERMINATION AS TO WHETHER COUNT IX OF THE STATEMENT OF ALLEGED VIOLATION HAS BEEN PROVEN AS A MATTER OF LAW AND THAT THE MATTER SHALL BE COMMITTED AS SOON AS PRACTICABLE TO THE ADJUDICATORY SUBCOMMITTEE FOR A DETERMINATION BY A MAJORITY VOTE OF ITS MEMBERS AS TO WHETHER COUNT IX OF THE STATEMENT OF ALLEGED VIOLATION HAS BEEN PROVED;

X. MOTION FOR DETERMINATION THAT THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT WITH RESPECT TO COUNT X OF THE STATEMENT OF ALLEGED VIOLATION IN THE ABOVE-CAPTIONED

MATTER, THAT COMMITTEE COUNSEL IS ENTITLED TO A DETERMINATION AS TO WHETHER COUNT X OF THE STATEMENT OF ALLEGED VIOLATION HAS BEEN PROVEN AS A MATTER OF LAW AND THAT THE MATTER SHALL BE COMMITTED AS SOON AS PRACTICABLE TO THE ADJUDICATORY SUBCOMMITTEE FOR A DETERMINATION BY A MAJORITY VOTE OF ITS MEMBERS AS TO WHETHER COUNT X OF THE STATEMENT OF ALLEGED VIOLATION HAS BEEN PROVED;

XI. MOTION FOR DETERMINATION THAT THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT WITH RESPECT TO COUNT XI OF THE STATEMENT OF ALLEGED VIOLATION IN THE ABOVE-CAPTIONED MATTER, THAT COMMITTEE COUNSEL IS ENTITLED TO A DETERMINATION AS TO WHETHER COUNT XI OF THE STATEMENT OF ALLEGED VIOLATION HAS BEEN PROVEN AS A MATTER OF LAW AND THAT THE MATTER SHALL BE COMMITTED AS SOON AS PRACTICABLE TO THE ADJUDICATORY SUBCOMMITTEE FOR A DETERMINATION BY A MAJORITY VOTE OF ITS MEMBERS AS TO WHETHER COUNT XI OF THE STATEMENT OF ALLEGED VIOLATION HAS BEEN PROVED;

XII. MOTION FOR DETERMINATION THAT THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT WITH RESPECT TO COUNT XII OF THE STATEMENT OF ALLEGED VIOLATION IN THE ABOVE-CAPTIONED MATTER, THAT COMMITTEE COUNSEL IS ENTITLED TO A DETERMINATION AS TO WHETHER COUNT XII OF THE STATEMENT OF ALLEGED VIOLATION HAS BEEN PROVEN AS A MATTER OF LAW AND THAT THE MATTER SHALL BE COMMITTED AS SOON AS PRACTICABLE TO THE ADJUDICATORY SUBCOMMITTEE FOR A DETERMINATION BY A MAJORITY VOTE OF ITS MEMBERS AS TO WHETHER COUNT XII OF THE STATEMENT OF ALLEGED VIOLATION HAS BEEN PROVED;

XIII. MOTION FOR DETERMINATION THAT THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT WITH RESPECT TO COUNT XIII OF THE STATEMENT OF ALLEGED VIOLATION IN THE ABOVE-CAPTIONED MATTER, THAT COMMITTEE COUNSEL IS ENTITLED TO A DETERMINATION AS TO WHETHER COUNT XIII OF THE STATEMENT OF ALLEGED VIOLATION HAS BEEN PROVEN AS A MATTER OF LAW AND THAT THE MATTER SHALL BE COMMITTED AS SOON AS PRACTICABLE TO THE ADJUDICATORY SUBCOMMITTEE FOR A DETERMINATION BY A MAJORITY VOTE OF ITS MEMBERS AS TO WHETHER COUNT XIII OF THE STATEMENT OF ALLEGED VIOLATION HAS BEEN PROVED;

and for such other and further relief as the adjudicatory subcommittee may deem just and proper.

Dated: Washington, D.C.
November 8, 2010

Yours etc.,

R. Blake Chisam
Chief Counsel
Committee on Standards of Official Conduct
Room HT-2, The Capitol
Washington, D.C. 20515

TO: REPRESENTATIVE ZOE LOFGREN
CHAIR
ADJUDICATORY SUBCOMMITTEE
ROOM HT-2, THE CAPITOL
WASHINGTON, D.C. 20515

REPRESENTATIVE MICHAEL MCCAUL
RANKING REPUBLICAN MEMBER
ADJUDICATORY SUBCOMMITTEE
ROOM HT-2, THE CAPITOL
WASHINGTON, D.C. 20515

REPRESENTATIVE CHARLES B. RANGEL
U.S. HOUSE OF REPRESENTATIVES
ROOM 2354, RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT
ADJUDICATORY SUBCOMMITTEE

In the Matter of

REPRESENTATIVE CHARLES B. RANGEL,

Respondent.
_____/

AFFIRMATION

R. BLAKE CHISAM, Chief Counsel to the Committee on Standards of Official Conduct, counsel to the adjudicatory subcommittee in the above-captioned matter, hereby affirms and states:

All allegations contained herein are based upon information and belief. The sources of such information and belief are documents and testimony obtained during the investigation of Representative Charles B. Rangel.

INTRODUCTION

The ultimate purpose of an adjudicatory subcommittee is to "hold a hearing to determine whether any counts in the Statement of Alleged Violation have been proved by clear and convincing evidence and [to] make findings of fact, except where such violations have been admitted by respondent."[1] "At an adjudicatory hearing, the burden of proof rests on Committee counsel to establish the facts alleged in the Statement of Alleged Violation by clear and convincing evidence."[2]

At the conclusion of its deliberations, an adjudicatory subcommittee must report its findings to the Committee.[3] If an adjudicatory subcommittee reports that any count in a Statement of Alleged Violation has been proved, the full Committee must hold a hearing "as to the sanction the Committee should recommend to the House of Representatives."[4] At the conclusion of the sanctions hearing, the Committee must "consider and vote on a motion to

[1] Committee Rule 23(c).
[2] Committee Rule 23(n).
[3] Committee Rule 23(p).
[4] Committee Rule 24(b).

recommend to the House of Representatives that the House take disciplinary action."[5] Thus, an adjudicatory hearing is an intermediary step within the disciplinary process in which the adjudicatory subcommittee is tasked merely with determining whether the counts alleged in the Statement of Alleged Violation have been proven.[6]

Committee rules expressly contemplate the filing of motions in connection with an adjudicatory hearing.[7] The Chair of the adjudicatory subcommittee must rule "upon any question of admissibility or relevance of evidence, motion, procedure, or any other matter, and may direct any witness to answer any question under penalty of contempt."[8]

Under the Committee's rules, "[a]ny relevant evidence shall be admissible unless the evidence is privileged under the precedents of the House of Representatives."[9] The Committee's rules contemplate winnowing issues of fact where the facts are not in dispute.[10] Where there is no genuine issue as to any material fact with respect to a count or counts in a Statement of Alleged Violation, an adjudicatory subcommittee can fulfill its responsibilities "to determine whether any counts in the Statement of Alleged Violation have been proved by clear and convincing evidence and [to] make findings of fact."[11]

In the above-captioned matter, Representative Charles B. Rangel (the "Respondent") has, on numerous occasions, admitted to a number of the allegations in the Statement of Alleged Violation adopted by the investigative subcommittee in this matter. In addition to Respondent's admissions, Committee counsel has developed an extensive documentary record. Respondent had the opportunity to object to the documents that Committee counsel intends to use as evidence against him in the adjudicatory hearing, but he did not object.[12]

Respondent's admissions and the uncontroverted documentary record, as well as testimony taken at the direction of the investigative subcommittee, establish, by clear and convincing evidence, each element of each count in the Statement of Alleged Violation. To the

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[5] Committee Rule 24(c).

[6] Committee Rule 23(o).

[7] Committee Rule 23(i)(2).

[8] *Id.*

[9] Committee Rule 23(i)(1).

[10] Committee Rule 23(c), (h), (i)(4), and (n).

[11] Committee Rule 23(c).

[12] On October 22, 2010, counsel to the Committee on Standards of Official Conduct (the "Committee") provided Representative Charles B. Rangel (the "Respondent") with a copy of the documents Committee counsel intends to use as evidence against Respondent in the adjudicatory hearing. On that same date, Committee counsel also provided Respondent with a list of the witnesses that counsel intends to call and a summary of their expected testimony. Pursuant to an order from the Chair of the adjudicatory subcommittee, Respondent had until October 29, 2010 to raise any objections to the evidence or witnesses, or any objections would be waived. Respondent did not submit any objections. As such, the documentary record has been established without the need for any rulings on the admissibility of documents.

extent that Respondent is challenging certain counts, it would appear that those challenges are, in actuality, legal arguments regarding the interpretation of the law or the application of undisputed facts to the law.

Therefore, there are no genuine issues as to any material fact with respect to any count in the Statement of Alleged Violation.

Accordingly, Committee counsel, as described in the attached Notice of Motion, moves: a) that the adjudicatory subcommittee determine, with respect to each count in the Statement of Violation, that there is no genuine issue as to any material fact with respect to each count in the Statement of Alleged Violation, that Committee counsel is entitled to a determination as to whether each count in the Statement of Alleged Violation has been proven as a matter of law, and that the matter be committed as soon as is practicable to the adjudicatory subcommittee for a determination by a majority of its members as to whether any count or counts in the Statement of Alleged Violation has or have been proved; and b) for such other and further relief as the adjudicatory subcommittee may deem just and proper.

STATEMENT OF MATERIAL FACTS

I. Respondent's Solicitations on Behalf of the Charles B. Rangel Center at City College of New York

a. Background

The idea for a Charles B. Rangel Center at the City College of New York ("CCNY") began late in 2004.[13] The initial conversations about creating such a center at CCNY occurred between Respondent and Gregory Williams, then President of CCNY.[14]

CCNY prepared a "proposal" that it sent to Respondent in March of 2005 ("Rangel Center brochure").[15] The Rangel Center brochure was a 20-page color presentation book, which described the major elements of the center, including the physical Rangel Center building, a library to house Respondent's papers, programming in public service, and a fellowship program.[16] The last page of the brochure states: "We ask you to consider a gift of $30,000,000 or $6,000,000/year for five years."[17]

On April 11, 2005, Jim Capel, Respondent's district director, informed Rachelle Butler, the vice president of CCNY's development office, that "the Congressman is very excited about the proposal that we put together and felt that it was very professional. He wants 50 copies sent

[13] Exhibit 104.
[14] Exhibits 104, 105.
[15] Exhibit 106.
[16] *Id.*
[17] *Id.*

to his DC office to fundraise with."[18] On April 18, 2005, Capel asked Butler to send him additional Rangel Center brochures "because they're sending them out to people to fundraise with."

Respondent did begin sending out Rangel Center brochures, along with a letter, in May of 2005. The first round of mailings went to Ted Kheel and the trustees of the Ann S. Kheel Charitable Trust.[19]

In June of 2005, Respondent's staff prepared form letters which were sent, along with the Rangel Center brochure, to approximately 121 persons.[20] The letter, which was written on congressional letterhead, stated:

> I want you to know about my personal interest in and enthusiasm for the creation of this Center and my pride in the decision of the City University to name it for me.
>
> . . .
>
> I am asking you to join me in the creation of a public policy center that will motivate and prepare young people presently underrepresented in public life to pursue careers in public service.
>
> . . .
>
> I have embraced the College's concept because it will allow me to locate the inspirational aspects of my legacy in my home Harlem community.
>
> . . .
>
> I will be exploring with my Congressional colleagues how best to move this idea through the appropriations process and am optimistic about securing funds for the planning phase of the creation of the Center. I request your advice and assistance concerning how to

[18] Exhibit 109.

[19] Exhibits 401, 402. Respondent is the Chairman of the Board of Trustees of the Ann S. Kheel Charitable Trust. Exhibit 387.

[20] Exhibit 139; Butler Tr. (11/13/09) at 9; Dalley Tr. (12/9/08) at 47-52. The letter was drafted by George Dalley, Respondent's then chief of staff. Dalley Tr. (12/9/08) at 44. Dalley directed and supervised staff and fellows on compiling a list of potential donors and preparation of the letters. Dalley Tr. (12/9/08) at 47-48, 51-52. Respondent personally signed each of the letters. Rangel Tr. at 23. Respondent directed the staff to perform the work related to the Rangel Center, and knew that the work was occurring on House property. Rangel Tr. at 21.

> approach the donor community, particularly private and corporate foundations interested in education. I look forward to entering into a dialogue with you on the funding of the Rangel Center concept in the coming weeks and months.[21]

Recipients considered these mailings to be solicitations, including solicitations for money. For example, one foundation responded to Respondent stating that "I am in receipt of your letter dated June 20th indicating that you will be creating the Charles B. Rangel Center for Public Service and need funding for the planning phase of this public policy center."[22] Another recipient wrote, in a letter to Respondent, "it appears that your focus is on building an endowment of $30,000,000 for the Rangel Center for Public Service."[23]

The packages were sent using the Respondent's congressional frank. One copy of the package obtained by Committee counsel included the envelope, which was clearly sent using Respondent's frank.[24] George Dalley, Respondent's former chief of staff, testified that he did not recall specifically using the franking privilege, "but it would be consistent with our practice that, if we felt it was a communication in the context of official duties, the franking privilege would have been used."[25]

In addition to two rounds of solicitation letters sent to foundations in June 2005, Respondent sent another round of letters in August 2005.[26] As with the June 2005 mailing, the letters were written on congressional letterhead containing the words "Congress of the United States" and "House of Representatives," and were prepared by Respondent's staff.[27] The language in those letters was identical to the language in the June 2005 letters.[28]

Respondent also sent at least two letters to foundations in September of 2005.[29] The letters were written on congressional letterhead with the words "House of Representatives" and bearing the American Bald Eagle and coat of arms from the Great Seal of the United States. In addition to the language from the previous letters, Respondent stated "I will have someone in my office call you to follow-up."[30]

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[21] Exhibit 140.

[22] Exhibit 170. Respondent replied to that letter stating, "While I am disappointed that you will not be able to fund the Charles B. Rangel Center for Public Service, I thank you for consideration of my request." Exhibit 171.

[23] Exhibit 168.

[24] Exhibit 138.

[25] Dalley Tr. (12/10/08) at 8.

[26] Exhibits 155, 156, 157, 159.

[27] Exhibit 156.

[28] *Compare* Exhibit 140 *with* Exhibit 156.

[29] Exhibits 160, 161.

[30] Exhibit 160.

Respondent also wrote a letter to Donald Trump in September 2005. Again the letter was written on congressional letterhead with the words "House of Representatives" and using the American Bald Eagle and coat of arms from the Great Seal of the United States. Respondent asked Trump for "advice and assistance" and requested a meeting with Trump.[31]

Respondent's next round of letters was sent in July 2006. Those letters included the following language:

> I am pleased to have been able to secure from the federal government grants in the amount of $3.6 million to permit a thorough and comprehensive planning process. I would appreciate your consideration of support for the Center as well as your advice and assistance concerning how to approach the donor community, particularly private and corporate foundations interested in education, for grants to support the education programs of the center. We are also interested in obtaining funding for the fellowship and scholarships which will be required for the exceptional but underprivileged students.
>
> I thank you for your consideration and for any future support that you may provide to the Charles B. Rangel Center at the City College of New York.[32]

The Rangel Center brochure was enclosed with the letters.[33] The letters were again written on congressional letterhead, bearing the words "Congress of the United States" and "House of Representatives", and were prepared by Respondent's staff.[34] One recipient of this letter characterized it as "a formal letter of request."[35] Another recipient wrote to Respondent stating, "We have reviewed the funding inquiry and supporting materials regarding the Rangel Center...."[36]

Respondent sent additional letters in March 2007 to Donald Trump, David Rockefeller, and Maurice Greenberg. The letters were written on congressional letterhead, bearing the American Bald Eagle and coat of arms from the Great Seal of the United States.[37] The letters were again prepared by Respondent's staff.[38] Each of those letters requested a meeting "in order

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[31] Exhibit 312.
[32] Exhibit 163.
[33] *See, e.g.*, Exhibits 166, 167.
[34] *Id.* Dalley Tr. (12/9/08) at 48, 51-52.
[35] Exhibit 353.
[36] Exhibit 169.
[37] Exhibits 172, 173, 174.
[38] *Id.*

to discuss with you my vision for the Charles B. Rangel Center for Public Service" describing the Rangel Center as "a personal dream of mine."[39]

In addition to letters, Respondent also participated in several meetings regarding the Rangel Center. Respondent admitted that he intended for money to be solicited during the meetings with potential donors.[40]

b. Entities Solicited

i. Verizon

1. Background

Verizon Communications, Inc. ("Verizon") is one of the world's largest providers of communications services, offering both wireless and wireline services.[41] For the year ended December 31, 2007, Verizon reported operating revenues of approximately $93 billion.[42] Ivan Seidenberg has been the Chairman and CEO of Verizon since 2000.[43] Former Representative Thomas Tauke has been the Executive Vice-President of Public Affairs, Policy and Communications since 2004.[44] Roger Mott has been a vice-president of Verizon in its government affairs department since approximately 2000.[45] Mott is a lobbyist responsible for relationships with the New York Delegation and Blue Dog Caucus.[46] Melvin Norris worked for Verizon as a New York state lobbyist, and is a former member of Respondent's staff.[47]

The Verizon Foundation is the philanthropic arm of Verizon. The Foundation is funded by Verizon.[48] Seidenberg is Chairman of the Board/Director and Tauke is the Vice Chairman and Secretary of the Verizon Foundation.[49] Patrick Gaston is the President of the Verizon Foundation.[50]

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[39] *Id.* As will be discussed, *infra*, all three men granted Respondent a meeting regarding the Rangel Center.

[40] Exhibit 542 ("If the Ethics Committee wants to decide that it was my intention that money be solicited during those meetings for the purposes of moving on this school of public service, I would have to say you're probably right.").

[41] Exhibit 281.

[42] *Id.*

[43] *Id.*

[44] *Id.*

[45] Mott Tr. at 6-7.

[46] Mott Tr. at 7.

[47] Mott Tr. at 22.

[48] *See, e.g.*, Form 990-PF for the Verizon Foundation for year ending December 31, 2008. Forms 990 and 990-PF are publicly-available, and can be located on a number of websites, including Foundation Center, http://www.foundationcenter.org (last visited November 4, 2010). For example, in 2004, Verizon contributed approximately $100 million to Verizon Foundation. *See* Form 990-PF for the Verizon Foundation for year ending December 31, 2004.

[49] *See, e.g.*, Form 990-PF for the Verizon Foundation for year ending December 31, 2008.

[50] *Id.*

Mott has been responsible for the New York Delegation throughout his lobbying career with Verizon and AT&T.[51] In that role, he has interacted with Respondent throughout that time period.[52] He has also worked with Dalley and Ways and Means staffer Jon Sheiner.[53]

2. Verizon Grant to Rangel Center

Respondent sent a solicitation letter in June 2005 to the Verizon Foundation.[54] It was addressed to Seidenberg, the Chairman of the Board of both Verizon and Verizon Foundation.[55] Respondent met Seidenberg "years ago" and knows he is the CEO of Verizon.[56]

In an email to Gaston, Seidenberg wrote:

> This is a tricky one…I'm not sure that Congressman Rangel will be satisfied with a modest participation…As a first step I agree that you should explore with his staff and then let's see what the situation might be … Just call his office and find out who you might meet with to explore this….Wait on a letter from me until we know what we intend to do…igs[57]

Gaston consulted with Mott to see whether Mott had an opinion about the grant request.[58] Mott testified that he had never received an inquiry of that nature previously, and he did not have an opinion on the subject.[59] Mott testified that the Rangel Center grant was the only time that he has been involved in a Verizon Foundation grant.[60]

A note in Butler's files indicates that Respondent may have asked Verizon to contact CCNY:

> Today, I received a call from Bernice Bradshaw at 212 395-[ ] about the proposed Rangel Center. Charles Rangel had told Mr. Mott to ask Patrick Gaston, president of the Verizon Foundation, to call me. I am waiting for her to get back to me.[61]

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[51] Mott Tr. at 8.
[52] *Id.*
[53] *Id.* at 9.
[54] Exhibit 227.
[55] *Id.*
[56] Rangel Tr. at 82-83.
[57] Exhibit 228.
[58] Mott Tr. at 13.
[59] *Id.*
[60] Mott Tr. at 38.
[61] Exhibit 231.

Documents from Verizon also indicate that Respondent's staff spoke with Mott about a potential grant. An email from Mott to Gaston stated:

> In line with our conversation I have spoken with George Dalley, Charlie Rangel's Chief of Staff here in DC. The Congressman is most appreciative that we have responded and are willing to meet to discuss further.[62]

After a meeting was arranged between Verizon Foundation and the CCNY fundraisers, Respondent sent a personal letter to Seidenberg thanking him for arranging the meeting.[63] In that letter Respondent wrote:

> I understood that the meeting went well and the foundation may be considering a grant in support of the Center.
>
> I appreciate your interest in this endeavor and look forward to continuing our discussion.
>
> Please do not hesitate to contact me about the creation of the Center.[64]

Verizon was, in fact, considering making a grant, and there were internal discussions over the appropriate amount. In an email to Gaston, Seidenberg wrote:

> A 500k commitment over a five year period sounds like it might work.....From the description, it sounds like a good program... The key here is to make sure that Mr. Rangel appreciates this level of support ....igs[65]

In an email thanking Gaston for their meeting, Butler wrote:

> As you requested, I have contacted the Congressman's office and asked them to notify him that we have had a very good conversation.[66]

In July 2005 Mott requested an update on the grant from Gaston, because Mott was "[s]eeing Charlie later this week and not bringing it up but need status in case he raises with

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[62] Exhibit 230.
[63] Exhibit 233.
[64] *Id.*
[65] Exhibit 234.
[66] Exhibit 235.

me."[67] Gaston indicated that a grant for $500,000 would be made, subject to approvals of the Verizon Foundation Board, after CCNY submitted a grant request.[68]

In August 2006, Mott requested another update on the grant from Gaston because "I am going to see Charlie next week down here and want to have the last info. at the ready in case this comes up."[69] Gaston indicated there was a "good possibility" of making the $500,000 grant, and Verizon was "waiting word from them on whether or not federal funding was secured and if they have gotten other corporate partners interested in this initiative."[70]

Mott discussed Verizon's potential grant to the Rangel Center with Sheiner at a dinner in December 2006.[71] Following that dinner, Mott emailed Dalley with an update on the status of the Verizon grant.[72] In response to that email, Dalley wrote:

> Roger, with the recent developments re earmarks we are going to need your help now more than ever. Do you know the contemplated level of support?[73]

Mott provided the information and offered to arrange a meeting or phone call with Gaston so that Gaston could personally update Dalley.[74]

A few months later, in May 2007, Respondent ran into Norris, an encounter which Norris described in an email to Sandra Wilson, Director of Verizon External Affairs:

> Hi Sandy, I ran into the Congressman last week and he spoke to me about a commitment (I do not know what it entails) from Ivan for the Rangel Center at City College that will prepare college students for foreign service careers.[75]

Wilson responded that the Foundation had been in discussions with CUNY to support the Rangel Center, but nothing had been confirmed yet.[76]

In May 2007, Mott requested another update from Gaston.[77] Mott wanted to have the update in advance of a breakfast fundraiser that was being hosted by Seidenberg. He wrote:

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[67] Exhibit 237.
[68] *Id.*
[69] Exhibit 246.
[70] Exhibit 247.
[71] Exhibit 249.
[72] *Id.*
[73] *Id.*
[74] *Id.*
[75] Exhibit 259.
[76] *Id.*
[77] Exhibit 258.

> I know when you updated me a year ago our support was contingent on Charlie securing Federal funds to build the actual building. I don't think that has progressed very far, but Verizon's willingness to fund a Telecom Center is a very positive message I know Ivan would want to personally convey to Charlie that morning. Just thinking whatever the status is now, we should probably get Ivan and Tom in the loop.[78]

In August 2007, Tauke forwarded information about the proposed grant to other Verizon lobbyists.[79] In that email exchange, Mott indicated that he had been aware of the pending grant because "Susan Sullivan at the Foundation called me two weeks ago asking my opinion and also indicating that Monica Azare had signed off."[80]

On August 21, 2007, Gaston forwarded to Seidenberg six grant requests, including the Rangel Center request.[81] Seidenberg approved the request on August 22, 2007.[82] Once the grant was approved, Sullivan and Gaston each notified Mott of the approval.[83] On August 29, 2007, Mott requested that either Azare or Norris notify Respondent of the grant approval, stating:

> Will you guys take care of notifying Charlie and other appropriate folks? Know George Dalley has inquired of me over the months and I just want to make sure one of us contacts him also.[84]

On the following date, Dalley sent an email to several members of Respondent's staff stating:

> Melvin Norris (212) 321-[ ] will be calling Charlie in a few minutes to inform him that he has received word that this grant was awarded by the Board yesterday. Please inform him of this[85]

Norris verified with Azare that he informed both Dalley and Capel about the grant, and left a message with Respondent.[86]

Verizon Foundation notified CCNY that the grant had been approved on September 5, 2007, which was six days after Respondent's office was notified.[87] Butler sent an email to Dalley

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[78] *Id.*

[79] Exhibit 268. Those lobbyists included Mark Mullet, Verizon's tax lobbyist. Mott Tr. at 57.

[80] Exhibit 268. Azare was a vice-president in the government affairs department at Verizon, overseeing government affairs in New York. Sullivan works for Verizon Foundation. Mott Tr. at 40.

[81] Exhibit 269.

[82] *Id.*

[83] Exhibits 270, 271. Sullivan notified Mott on August 22, 2007 and Gaston notified Mott on August 27, 2007.

[84] Exhibit 276.

[85] Exhibit 273.

[86] Exhibit 275.

[87] Exhibit 277.

and Berger informing them of the grant, and Dalley indicated that he would share the news with Respondent.[88]

The first installment of Verizon's pledge, in the amount of $100,000, was paid on December 7, 2007.[89] Subsequent installments were paid on April 2, 2008 in the amount of $300,000,[90] and on June 5, 2009 in the amount of $100,000.[91]

3. Verizon's interests and business before the House

Verizon is a large corporation that, in the ordinary course of its business, has an interest in pending legislation. Lobbying disclosure forms indicate that Verizon spends millions of dollars each year on lobbyists, both those employed by Verizon and outside firms.[92]

For example, Verizon's Lobbying Disclosure Statement for its in-house lobbyists for the year end 2005 identifies 18 specific House bills lobbied on, as well as 33 specific Senate bills and numerous other issues.[93] Verizon's statement for year end 2006 identifies 33 specific House bills lobbied on, as well as 33 specific Senate bills and numerous other issues.[94] The year end 2006 statement indicates that Verizon lobbied on 16 specific House bills related to taxation.[95]

Documents produced by Verizon demonstrate that Respondent and his staff were personally involved in or lobbied on a number of issues involving Verizon, to wit:

- February 12, 2005 email from Mott to Tauke: "[Dalley] confirmed just now that Charlie is not signing the Miller VZ Wireless letter. Said he spoke with Ivan [Seidenberg] and then told George if he had not already signed that he wanted to stay off the letter. George assured me he has not signed off and will not."[96]

- July 29, 2005 email exchange between Rangel staff and Verizon lobbyist Roger Mott regarding the Video Choice Act of 2005: "Hope Charlie can join in [co-sponsorship] today. It would be a huge boost to our efforts and most appreciated by Ivan and certainly me."[97]

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[88] *Id.* Butler was not included on earlier emails, and was apparently not aware that Respondent and his office had been informed of the grant approval a week earlier.

[89] Exhibit 279.

[90] Exhibit 286.

[91] Exhibit 289.

[92] *See, e.g.,* Exhibit 242 (year end 2005 Lobbying Disclosure form indicating in-house lobbying expenses of $4.2 million).

[93] *Id.*

[94] Exhibit 253.

[95] *Id.*

[96] Exhibit 545.

[97] Exhibit 238.

- April 19, 2006 email from Mott to Sheiner: "I expect a vote in the full House on Nationwide Franchising sometime in May. I [sic] would probably be good for me, along with Monica Azare . . . to visit with you and Charlie whenever you think it is appropriate."[98]

- July 7, 2006 email from Mott to Dalley: "Many thanks to Charlie and to you, for his support on final passage of the Barton-Rush Telecom bill."[99]

- June 14, 2007 internal Verizon email exchange regarding Broadcom issue and a call to Respondent in which Azare asks Seidenberg "Did you speak with [Respondent]?" to which Seidenberg replied "Yes ... Direct and supportive... He said he was working this and will get back to me... igs."[100]

- June 29, 2007 email from Mott to Dalley regarding the cell phone chip importation issue which states, "Any effort Charlie can undertake along these lines will be most appreciated by Ivan and the entire cell phone industry."[101]

- January 27, 2008 email from Mott to Dalley: "Attached is a paper on bonus depreciation as it applies to broadband deployment. Mark Mullet in our office already forwarded to John Buckley and Jon Sheiner. Just wanted you to have for your review and input with Charlie."[102]

- October 1, 2008 letter from Seidenberg to Respondent: "I encourage you to act promptly to approve legislation to stabilize our nation's financial system."[103]

- March 23, 2009 internal Verizon email from Mott indicating that a meeting between Seidenberg and Respondent had been set for the next day: "Charlie Rangel can visit with Ivan at 1:45PM tomorrow in H-208 of the Capitol. Does not want an entourage so if you are with Ivan fine. I would counsel against bringing others for sake of it not becoming a group discussion instead of a one on one Chairman Rangel and Chairman Seidenberg discussion."[104]

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[98] Exhibit 244.
[99] Exhibit 472.
[100] Exhibit 261.
[101] Exhibit 262.
[102] Exhibit 284.
[103] Exhibit 287.
[104] Exhibit 288.

ii. Starr Foundation

In March of 2007, Respondent sent a letter to Hank Greenberg requesting a meeting about the Rangel Center.[105] A meeting was scheduled for June 4, 2007.[106] The meeting was attended by Respondent, Greenberg, Williams, and Butler.[107]

Butler's notes of the meeting indicate that the conversation at the meeting centered around China and former New York Attorney General Eliot Spitzer, and there did not appear to be any discussion of the Rangel Center.[108] The notes state:

> Then Congressman Rangel said that he guessed this wasn't a good day to come about this purpose. Hank said he would "give us something" and that he knew City College was a good school. After that, we took our leave.
>
> Five minutes after I returned to campus, Florence Davis, president of the Starr Foundation, called to tell me that the chairman wanted a request for funds to the Rangel Center on the Starr Foundation Board's agenda for the June 12 meeting. . . . She asked if a number had been mentioned; I said they were mostly talking about China, but that President Williams was going to ask for $10 million and the Congressman thought that was about right.[109]

Davis sent an email to Greenberg on that same day, stating that CCNY would be sending over information and "I will write it up for $5 million for the June 12 board meeting, but I will let you know if the donor list and budget suggest another amount."[110]

The Rangel Center grant was added, on June 6, 2010, to the Starr Foundation Board's agenda in the amount of $5 million.[111] The board approved the grant on June 12 and the first installment, stock valued at approximately $2,000,000, was sent to CCNY on June 27, 2007.[112]

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[105] Exhibit 291.

[106] Exhibit 292. Respondent's calendar item for the meeting states: "Topic: Funding for Rangel Center at City College."

[107] Exhibit 295.

[108] *Id.*

[109] *Id.*

[110] Exhibit 294.

[111] Exhibit 296.

[112] Exhibit 430.

iii. David Rockefeller

On March 7, 2007, the same date that Respondent wrote to Greenberg, he also sent an identical request for a meeting to David Rockefeller.[113]

Rockefeller had been invited to a luncheon at the Ford Foundation with Respondent to discuss the Rangel Center, but he could not attend.[114] Butler asked Rockefeller's office if they could set up an appointment with Rockefeller and "one of his assistants suggested that Congressman Rangel send Mr. Rockefeller a note about it."[115] Butler informed Respondent's congressional and campaign staff about this suggestion.[116]

A meeting was set for October 22, 2007.[117] The meeting was attended by Respondent, Rockefeller, Rockefeller's philanthropic associate Marnie Pillsbury, Williams, and Butler.[118] At the end of their discussion, Butler's notes indicate that Rockefeller stated "in tribute to the Congressman, he would give him $100,000 to put toward any program he wished and that it would be unrestricted as he believes in that."[119] Rockefeller did, in fact, contribute $100,000.[120]

iv. Donald Trump

In September 2005, Respondent sent a letter to Donald Trump requesting a meeting to discuss the Rangel Center.[121] A meeting between Respondent and Trump was set for October 7, 2005.[122] Dan Berger, one of Respondent's congressional staffers, prepared a memo for Respondent in advance of that meeting.[123] That memo stated:

> Per your request, I have compiled some information about Mr. Trump's previous philanthropic ventures.
>
> . . .
>
> The proposal for the Charles B. Rangel Center for Public Policy is in the inside flap of this binder.[124]

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[113] Exhibit 306.
[114] Exhibit 305.
[115] *Id.*
[116] *Id.*
[117] Exhibit 307.
[118] Exhibit 308.
[119] *Id.*
[120] Exhibit 311.
[121] Exhibit 312.
[122] Exhibit 313.
[123] *Id.*
[124] *Id.*

In March 2007, Respondent wrote to Trump requesting another meeting.[125] Trump did provide Respondent with another meeting.[126] The meeting was set for May 4, 2007, with Respondent, Trump, Williams, and Butler attending.[127] Trump did not make a contribution to the Rangel Center.

v. Ford Foundation

1. Background

The Ford Foundation was established in 1936 by Edsel Ford, and was bequeathed nonvoting stock in the Ford Motor Company upon the deaths of Edsel Ford and Henry Ford.[128] Today, the Ford Foundation is entirely separate from the Ford Motor Company.[129]

The Ford Foundation is one of the wealthiest foundations. At the end of its 2007 tax year, Ford Foundation had assets worth approximately $11 billion.[130] The Ford Foundation holds a significant amount of assets for investment purposes. For the 2007 tax year, its capital gain net income exceeded $589 million.[131]

Susan Berresford was President of the Ford Foundation from 1996 until her retirement in 2007.[132] Alison Bernstein was Vice President at the Ford Foundation during the relevant period, and oversaw the Ford Foundation program on Education, Creativity and Free Expression.[133]

2. Ford Foundation grant to Rangel Center

Respondent sent a solicitation letter to the Ford Foundation, dated June 13, 2005.[134] Ford Foundation expressed interest in the program almost immediately, with Berresford writing a letter to Respondent on June 27, 2005, expressing interest in a meeting to discuss the Rangel Center.[135] A meeting was held in September 2005 with Ford Foundation representatives, CCNY officials, and Respondent.[136]

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[125] Exhibit 316.

[126] Exhibit 318.

[127] Exhibit 319.

[128] *See, e.g.,* Ford Foundation, http://www.fordfound.org/about-us/history (last visited November 4, 2010).

[129] *See, e.g.,* Ford Foundation, http://www.fordfound.org/about-us/mission (last visited November 4, 2010).

[130] Form 990-PF for The Ford Foundation for year ending September 30, 2008. Forms 990 and 990-PF are publicly-available, and can be located on a number of websites, including Foundation Center, http://www.foundationcenter.org (last visited November 4, 2010).

[131] *Id.*

[132] Berresford Tr. at 4.

[133] Bernstein Tr. at 5.

[134] Exhibit 342.

[135] Exhibit 343.

[136] Exhibit 345; Berresford Tr. at 7.

CCNY sent an initial proposal to the Ford Foundation in December 2005.[137] That proposal states that CCNY "anticipates that the United States Congress will support this initiative with a seed grant."[138] The proposal reiterated the proposed budget of $30 million for the Rangel Center, and requested a grant of $750,000 from the Ford Foundation.[139]

In addition to considering its own grant, the Ford Foundation agreed to host a luncheon for other potential donors.[140] Initially, the luncheon was planned for May 2006.[141] Bernstein became concerned that initial funding for the Rangel Center, including congressional appropriations, was not sufficiently established.[142] In an email to Berresford, she wrote:

> Unfortunately, Congress has not taken any step towards funding – they still have only the $450,000 earmark they always had when they started talking with us. I am beginning to think that such a briefing is pre-mature given the slow pace of Congressional action. What is your assessment? Do you still want us to go forward? Remember they are looking for big bucks from Congress. I think it might make sense to postpone until early summer or the fall.[143]

Bernstein had spoken to Butler about the lack of congressional support.[144] After that conversation, Butler spoke to Capel regarding the issue.[145] Butler then reported to Williams:

> Jim took it to the Congressman and called me yesterday. He said that we're going to be getting a letter from the Congressman re actions they are proposing for this year's appropriations -- the '07 year – which total about $10 million this year. He thinks they'll probably be successful, at least to the tune of several million.[146]

Butler relayed this information to Bernstein, who indicated that having the luncheon in May 2006 was still possible, but not probable.[147] Butler subsequently forwarded to Bernstein letters written by Respondent to certain Members on the Appropriations Committee requesting earmarks.[148] The luncheon was, in fact, postponed.[149]

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[137] Exhibit 346.
[138] *Id.*
[139] *Id.*
[140] Bernstein Tr. at 15.
[141] Exhibit 351.
[142] Exhibit 348.
[143] *Id.*
[144] Exhibit 349.
[145] *Id.*
[146] *Id.*
[147] *Id.*
[148] Exhibit 350.

In the summer of 2006, the Ford Foundation received another form letter from Respondent.[150] Berresford asked Bernstein to have some type of response prepared, indicating that Ford Foundation was committed to the project, "but a few hurdles remain."[151] Berresford also noted that the letter indicated "they have the $3.6 million from congress [sic]."[152]

In October 2006, Butler provided an update to Bernstein on the Rangel Center, including funding. Butler provided Bernstein with a spreadsheet showing current totals for pending and confirmed donations.[153] Butler stated, "We have the seed money the Congressman promised and we are making headway in the second fundraising phase, approaching foundations, corporations, and individual donors." Butler copied other individuals on that email, including Capel.[154]

In response to that email, Bernstein stated that she had talked with Berrresford and "we can now encourage you to submit a proposal for $1 million."[155] Bernstein also requested dates that both Williams and Respondent would be available for the lunch stating that "[Berresford] thinks the pitch requires both of them to be there."[156]

In November 2006 Berresford attended a dinner where Dalley spoke.[157] She stated that "I had a good exchange with him. Also with the staffer who will cover philannthropy [sic]."[158] She also indicated that Dalley knew that the Ford Foundation was having a lunch "for rangel's center."[159]

Following the November 2006 elections, at least one Ford Foundation official noted the increased visibility that Respondent's new role could bring to the Rangel Center. She wrote "I wonder whether the recent developments with the Democrats taking control of Congress and Congressman Rangel soon to assume the Chairmanship of the House Ways and Means Committee will result in even more funding for the Center."[160]

CCNY submitted a proposal in December 2006 for the $1 million grant.[161] A research associate at Ford Foundation working on the Rangel Center proposal characterized the proposal

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[149] Bernstein Tr. at 42.
[150] Exhibit 353.
[151] *Id.*
[152] *Id.*
[153] *Id.*
[154] Exhibit 354.
[155] *Id.*
[156] *Id.*
[157] Exhibit 359.
[158] *Id.*
[159] *Id.*
[160] Exhibit 360.
[161] Exhibit 356.

as "weak" and stated, "[i]n order to get the grant proposal finished, I had to offer them assistance that is not normally extended to grantees...."[162]

The lunch was set for January 29, 2007. CCNY provided the Ford Foundation with the names of foundations and others to invite to the lunch, and the Ford Foundation then culled that list to arrive at the final list of invitees.[163] In addition to a number of foundations, CCNY requested that the Ford Foundation invite Ned Cloonan, an AIG executive, Martin Sullivan, the CEO of AIG, Robert Morgenthau, District Attorney for New York County, and Donald Trump.[164] The Ford Foundation also invited Lorie Slutsky, President of the New York Community Trust, who, in turn, invited Sharon King, President of the F.B. Heron Foundation.[165]

Butler's briefing memo for the luncheon indicates the first objective is to interest attendees in making "substantial contributions" to the Rangel Center.[166] Confirmed attendees included representatives from New York Community Trust, Verizon Foundation, and the Rockefeller Brothers Fund.[167] Each of those attendees subsequently made a contribution to the Rangel Center.

The luncheon was held at the Ford Foundation offices in one of its private dining rooms.[168] A sign was posted directing attendees to the luncheon, which read:

CONGRESSMAN CHARLES B. RANGEL
LUNCHEON
PRIVATE DINING ROOM A-D[169]

The luncheon lasted approximately one and a half hours. Respondent made a brief presentation at the luncheon.[170]

CCNY submitted a revised proposal to the Ford Foundation in March 2007.[171] The Ford Foundation approved a $1 million grant to the Rangel Center on March 30, 2007.[172] The grant provided for payments of $250,000 per year over four years.[173] The first payment was made in May of 2007 and has continued annually since then.[174]

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[162] Exhibit 379.
[163] Bernstein Tr. at 17.
[164] See Exhibit 365; Bernstein Tr. at 18.
[165] Exhibit 370.
[166] Exhibit 371.
[167] Exhibits 371, 372.
[168] Bernstein Tr. at 19.
[169] Exhibit 373.
[170] Bernstein Tr. at 191; Exhibit 372.
[171] Exhibit 378.
[172] Exhibit 380.
[173] *Id.*

3. Ford Foundation's interests and business before the House

Foundations are subject to the legislative jurisdiction and oversight jurisdiction of Congress, and specifically the Ways and Means Committee.[175] In addition to their own governance issues, foundations are substantially affected by tax legislation, both those tax issues affecting foundations directly and those affecting potential donors.

During the relevant time period, the Ford Foundation did retain federally-registered lobbyists.[176]

Tax-exempt private foundations are generally prohibited from lobbying.[177] Foundations do belong to member associations, and some of those associations lobby on behalf of the industry.[178] One such organization is the Council on Foundations.[179] The Ford Foundation is a member of the Council on Foundations, as well as other associations.[180] The Ford Foundation pays a membership fee to belong to the Council on Foundations.[181] The President of the Council on Foundations is former Representative Steve Gunderson.[182]

Following the November 2006 election, Gunderson sent a legislative update to the Ford Foundation. The update began with a discussion of the election results, and the fact that Respondent would become Chairman of the Ways and Means Committee. Also included was a discussion of the Pension Protection Act of 2006 that had become law in August of 2006. Looking forward to the year 2007, Gunderson noted:

> As we prepare for the beginning of a new Congress in January, we keep in mind two important lessons from our experience with the PPA: 1) Advocating without a specific legislative vehicle—a specific bill with specific language—is dangerous and undesirable; and 2) Our sector must never again be put on the defensive in our legislative discussions with Congress.
>
> I strongly believe that we must be proactive and introduce a bill that will help us shape and define the philanthropic agenda on Capitol Hill during the 110th Congress. Our government relations

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[174] Exhibit 383.

[175] House Rule X, cl. 1(t)(8).

[176] Exhibits 385, 386.

[177] 26 U.S.C. § 501(c)(3).

[178] *See* Berresford Tr. at 21-24. Foundations pay a membership fee to belong to associations such as the Council on Foundations. *Id.*

[179] In fact, Respondent's staff used a Council on Foundations book listing non-profit foundations to compile the list of foundations to solicit initially. Dalley Tr. (12/9/08) at 47-48.

[180] Berresford Tr. at 21-22.

[181] Berresford Tr. at 21.

[182] *See generally* Council on Foundations, http://www.cof.org (last visited November 4, 2010).

> and legal teams, working with our volunteer leaders, have begun the process to develop this proactive legislation. In the coming weeks, you will have opportunities to comment on potential proposals.[183]

The Council on Foundations began having discussions with Respondent and Ways and Means staff in December 2006, as reported by the Council's Coordinator of Government Relations and Public Policy:

> Janne and I met today with George Dalley, Chairman-Elect Rangel's Chief of Staff, and Sonja Nesbit, a member of the Democratic staff on the Ways and Means Committee. . . . Janne outlined our remaining concerns with the donor-advised fund and supporting organization reforms included in the PPA. George and Sonja offered to have Rangel weigh in with the IRS on the need to issue further guidance. They also said that fixing these issues would be a priority once they take charge.
>
> George said that Rangel had not yet determined his charitable giving agenda, but asked what we thought would be our #1 priority in terms of increasing charitable giving. Janne mentioned the extension and expansion of the IRA charitable rollover and increasing the percentage limits on amount an individual can deduct for charitable purposes from adjusted gross income. . . .
>
> Sonja mentioned that the Ways and Means Committee has hired an additional tax lawyer who will handle charitable issues for the committee. She wants to set up another meeting for us all in January that would include this new staffer.[184]

The interest of foundations in legislation is also seen in lobbying disclosure statements filed by firms working on behalf of the Council on Foundations. For example, in 2007, the Council lobbied on amendments to exempt organization provisions in the Pension Protection Act of 2007.[185] Respondent sponsored H.R. 4839, Tax Technical Corrections Act of 2007, which included corrections to the Pension Protection Act of 2007.[186] Also in 2007, the Council lobbied on H.R. 1419, seeking to expand the IRA charitable rollover, which was referred to the Ways and Means Committee. Other issues on which foundation representatives lobbied during the

[183] Exhibit 204.
[184] Exhibit 361.
[185] Exhibit 217.
[186] That bill became Pub. L. No. 110-172.

110th Congress include H.R. 4 (Pension Protection Act of 2006), H.R. 3908 (Charitable Giving Act of 2005), and H.R. 3501 (regarding unrelated business income of tax-exempt organizations).

One area of particular interest to many private foundations is the "pay-out" amount that foundations must pay out in a particular year.[187] Another area of interest is the amount of excise tax that foundations must pay on amounts on their investment income. In an email exchange between Gunderson and Berresford, Berresford explained the Ford Foundation's concerns about excise tax reform:

> We at the FF have always thought there were huge risks in pushing on the excise tax – risk that others less familiar with the legislative process tend not to see. We don;t believe that the tax will ever be simply eminiated. Tinkering with the tax has huge risks of generating quid pro quo of raising the payout. With all the talk of the new donors timelimiting their foundations enlarges these risks. The flat 1% is appealing and was endorsed by the Joint Committee on Taxation. The revenue neutral option is attractive but still has the risks of the others re payout etc.[188]

The Ways and Means Committee also holds oversight hearings regarding foundations. For example, in 2005, a hearing on "Overview of the Tax-Exempt Sector" was held.[189] Soon after assuming his role as Chairman of the Ways and Means Committee, Respondent provided the required list of hearings and oversight-related activities that the Committee and its subcommittees planned to conduct during the 110th Congress, which included the following matters on tax-exempt organizations:

> Oversight review of the advantages and disadvantages of recently-enacted tax provisions that affect charities and foundations, particularly how the new rules affect charitable efforts and the ability of these organizations to serve those in need. Evaluate overall IRS efforts to monitor tax-exempt organization activities, prevent abuse, and ensure timely information to the public about charity activities and finances.[190]

The Ways and Means Subcommittee on Oversight held a hearing in July 2007 on tax-exempt charitable organizations, at which Gunderson testified.[191] The subcommittee held another

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[187] Bernstein Tr. at 74-75.

[188] Exhibit 371 (typographical errors in original).

[189] *Overview of the Tax Exempt Sector: Hearing Before the Comm. on Ways and Means*, 109th Cong. (Apr. 20, 2005).

[190] Exhibit 205.

[191] Exhibit 207.

hearing in September 2007 on the issue of whether charitable organizations serve the needs of diverse communities. Berresford testified at that hearing.[192]

At a breakfast fundraiser hosted by the ACLI in June 2007, Respondent discussed several issues with the attendees. He informed them that "he had instructed staff to review many outdated provisions in the tax code, and, in particular, in the non-profit area."[193]

Private foundations, in general, and the Ford Foundation, specifically, have an ongoing and specific interest in a number of legislative and oversight activities.

vi. The New York Community Trust

1. Background

The New York Community Trust ("NYCT"), founded in 1924 is a community foundation.[194] NYCT, one of the largest community foundations in the United States, is comprised of nearly 2,000 charitable funds.[195] Lorie Slutsky has been president of NYCT since 1990.[196]

2. NYCT grant to Rangel Center

Slutsky was invited to attend the Ford Foundation lunch for the Rangel Center.[197] She described the lunch as "at Rangel's request to talk to New York foundations about funding the new Rangel Center for Public Service being established at CCNY."[198] After the lunch, Williams wrote Slutsky thanking her for attending, and stating, "We look forward to having the opportunity to work with you in making Congressman Rangel's dream a reality."[199]

Following the lunch, CCNY submitted a proposal to NYCT, requesting a grant of $65,000.[200] A two-year grant of $130,000 was approved.[201] Slutsky wrote a letter to Respondent informing him of the grant.[202] In response to that letter, Respondent wrote to Slutsky, stating, "I

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[192] Exhibit 381.
[193] Exhibit 456.
[194] *See* New York Community Trust, http://www.nycommunitytrust.org (last visited November 4, 2010).
[195] *Id.*
[196] *Id.*
[197] *See* Exhibit 365.
[198] Exhibit 370.
[199] Exhibit 323.
[200] Exhibit 324.
[201] Exhibit 329.
[202] Exhibit 330. The board of the NYCT was informed of this communication, noting that Respondent was "chairman of the powerful House Ways and Means Committee." Exhibit 326.

am writing to thank you for such a generous and substantial grant from the New York Community Trust for the Rangel Center for Public Service fellowships."[203]

NYCT paid the first installment of its donation, in the amount of $65,000, in August 2007.[204] A second $65,000 payment was made in September 2009.[205]

3. NYCT interests and business before the House

Public charities, including community foundations, can be more directly involved than private foundations in advocating particular issues before Congress.[206] For example, NYCT wrote to Respondent in March 2006 regarding his role as a member on the conference committee on H.R. 4297 and S. 2020.[207] NYCT raised concerns about specific provisions in S. 2020 including issues regarding illiquid assets held in donor-advised funds.[208] Those provisions were not included in the bill that emerged from the conference.[209]

The New York Community Trust has also provided testimony to the Ways and Means Committee. For example, Slutsky submitted comments on provisions related to tax-exempt organizations in the Pension Protection Act of 2006.[210] In a 2007 memorandum to NYCT's Board of Directors, it was reported that "Trust staff also responded to the House Ways and Means Committee's call for comments on the impact of the Pension Protection Act of 2006 on nonprofits."[211]

vii. Gene Isenberg/Nabors Industries

1. Background on Isenberg/Nabors

Nabors Industries Ltd. ("Nabors") is one of the world's largest drilling companies, and its business includes oil, gas and geothermal land drilling operations as well as offshore drilling services.[212] Nabors reported total revenue of approximately $5.3 billion for 2008.[213] Eugene "Gene" Isenberg is the long-time president and CEO of Nabors.[214]

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[203] Exhibit 332.
[204] Exhibit 333.
[205] Exhibit 335.
[206] *See* 26 U.S.C. § 501(h). NYCT is also a member of organizations such as the Council on Foundations and Independent Sector.
[207] Exhibit 332.
[208] *Id.*
[209] H.R. Rep. No. 109-455 (2006) (Conf. Rep.).
[210] Exhibit 327.
[211] Exhibit 326.
[212] Exhibit 435.
[213] *Id.*
[214] *See* Nabors Industries, http://www.nabors.com/Public/Index.asp?Page_ID=13 (last visited November 4, 2010).

2. Isenberg/Nabors' contribution to Rangel Center

In the fall of 2006, Bob Morgenthau, then District Attorney for New York County, brought together Isenberg, Respondent, and CCNY officials.[215] A meeting was held in September 2006 in Morgenthau's office.[216]

In advance of the meeting, CCNY sent Isenberg a Rangel Center brochure and proposal where they requested a pledge of $200,000 per year for 5 years.[217] In a follow-up letter to Respondent on October 3, 2006, Isenberg indicated that he would be contacting Williams to discuss a multi-year gift.[218]

On October 19, 2006, Butler sent an email to Dan Berger, a member of Respondent's staff, asking if the Respondent would call Isenberg. She indicated that Isenberg had mentioned a possible $500,000 contribution to the Rangel Center to Morgenthau, but "if the Congressman feels comfortable making the call to Gene, we would love for him to ask for $1 million over five years."[219] Berger wrote back stating, "in case he decides to make the call, do you have a phone number?"[220]

Isenberg pledged a personal contribution of $500,000 and obtained a corporate match of $500,000.[221] Both Isenberg and Nabors paid the first installment of their pledges, $100,000 each, in December 2006.[222]

Documents obtained from CCNY indicate that Respondent was informed about the Isenberg contribution.[223] A November 12, 2006, letter from Williams to Isenberg stated "Gene, Congressman Rangel is absolutely delighted about your wonderful contribution to the Rangel Center at City College and I am so pleased that we will be naming his office for you."[224] Respondent was copied on that letter.[225] In addition, a letter from Butler stated that:

> We told Congressman Rangel of your wonderful pledge and he was delighted. I know as soon as things quiet down a little for him that he will be in touch with

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[215] *See* Exhibit 418.
[216] Exhibit 420.
[217] Exhibit 418.
[218] Exhibit 421.
[219] Exhibit 422.
[220] *Id.* There is no evidence indicating whether Respondent did, in fact, call Isenberg.
[221] *Id.*
[222] Exhibits 426, 427. Isenberg, however, paid his installment from the wrong account. His staff contacted CCNY and requested that his personal contribution be returned and replaced with a check from another account. The new check was dated February 7, 2007, and was forwarded to CCNY on February 16, 2007. Exhibit 428.
[223] Exhibit424; Exhibit 425.
[224] Exhibit 424.
[225] *Id.*

you. He was also very pleased at naming his office in your honor in recognition of what you are doing for the Center and for the students at City College.[226]

Further, Butler emailed Dalley (and most of Respondent's staff) on December 26, 2006, informing him that "we have received the signed agreement from Gene Isenberg and his first payment of $200,000 -- $100,000 by personal check and $100,000 by a match from Nabors. . . . Gene has asked that the room we have set asked [sic] for the Congressman's office in the Center be named for his wife, Ronnie, and him."[227]

3. Nabors' interests and business before the House

Nabors is a large corporation which could be affected by any number of legislative or regulatory decisions. Nabors has an ongoing and substantial interest in a specific area of tax law. In June of 2002 Nabors, in a transaction typically referred to as a corporate inversion, reincorporated in Bermuda in an effort to reduce the amount of its corporate income taxes.[228]

Nabors was not the first company to move offshore for this purpose. The trend of corporate inversions did not go unnoticed by Congress, and a movement began in the post-9/11 months to put an end to the tax benefits of these transactions.[229] The Senate did pass a bill that applied to inversions occurring after March 20, 2002.[230] The House also passed a bill on June 17, 2004 addressing inversions, which was included as part of H.R. 4520, the American Jobs Creation Act of 2004.[231] The House bill applied the inversion provisions to inversions occurring after March 4, 2003. The Senate then passed H.R. 4520, with amendments, but did not amend the effective date of the inversion provisions. The agreement on the bill that emerged from conference retained the March 4, 2003 effective date.[232] The House agreed to the Conference Report on October 7, 2004.[233] The bill became law on October 22, 2004.[234]

Because of the effective date of the legislation, Nabors was not affected by the legislation. Nabors, however, recognizes that the possibility remains that the effective date of the

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[226] Exhibit 425.

[227] Exhibit 128.

[228] Exhibit 435. For a discussion of how corporate inversions may result in tax savings, *see* Joint Committee on Taxation, *Description of the Chairman's Modification of the Provisions of the "Small Business and Work Opportunity Act of 2007"* (January 17, 2007).

[229] *See* CRS Report for Congress, *Firms that Incorporate Abroad for Tax Purposes: Corporate "Inversions" and "Expatriation"* (March 11, 2005).

[230] CRS Report for Congress, *Firms that Incorporate Abroad for Tax Purposes: Corporate "Inversions" and "Expatriation"* (March 11, 2005).

[231] *Id.*

[232] That bill, the American Jobs Creation Act, became Pub. L. No. 108-357.

[233] 150 Cong. Rec. H8725-26 (daily ed. Oct. 7, 2004) (recorded vote). Respondent voted against the original bill and the conference report. *See* 150 Cong. Rec. H4433 (daily ed. June 17, 2004) (recorded vote); 150 Cong. Rec. H8725-26 (daily ed. Oct. 7, 2004) (recorded vote).

[234] Pub. L. No. 108-357.

legislation continues to be subject to change. The company identifies that possibility as a "risk factor" in its filings with the Securities and Exchange Commission. For example, Nabors 2008 Form 10K states:

> Various bills have been introduced in Congress which could reduce or eliminate the tax benefits associated with our reorganization as a Bermuda company. Legislation enacted by Congress in 2004 provides that a corporation that reorganized in a foreign jurisdiction on or after March 4, 2003 shall be treated as a domestic corporation for United States federal income tax purposes. Nabors' reorganization was completed June 24, 2002. There have been and we expect that there may continue to be legislation proposed by Congress from time to time applicable to certain companies that completed such reorganizations on or after March 20, 2002 which, if enacted, could limit or eliminate the tax benefits associated with our reorganization.
>
> Because we cannot predict whether legislation will ultimately be adopted, no assurance can be given that the tax benefits association with our reorganization will ultimately accrue to the benefit of the Company and its shareholders. It is possible that future changes to the tax laws (including tax treaties) could have an impact on our ability to realize the tax savings recorded to date as well as future tax savings resulting from our reorganization.[235]

Nabors has lobbied on the retroactivity issue for years, and continues to do so.[236]

viii. Other Donors

In addition to the donors previously discussed, donations of at least $25,000 were also made by the Rockefeller Brothers Fund, the Rhodebeck Charitable Trust, Robert Catell, and John and Judy Weston.

A representative from the Rockefeller Brothers Fund ("RBF") attended the Ford Foundation luncheon in January 2007.[237] CCNY submitted a proposal to RBF in January 2008 to fund a fellowship program.[238] RBF made a $50,000 grant to the Rangel Center.[239]

Huyler Held, trustee for the Rhodebeck Charitable Trust, received a solicitation letter from Respondent dated July 26, 2006.[240] In response to that letter, he recommended, as advisor

[235] Exhibit 435.
[236] Exhibits 438-444.
[237] Exhibit 372.
[238] Exhibit 336.
[239] Exhibit 337.
[240] Exhibit 166.

to the Rhodebeck Charitable Trust, that a grant of $25,000 be made to the Rangel Center.[241] That grant was made on September 5, 2006.[242]

Josh and Judy Weston made a donation of $500,000 to be used for scholarships for students seeking a master's degree in public administration.[243] Robert Catell made an unrestricted donation of $500,000 to the Rangel Center.[244] There is no evidence that Respondent was involved in soliciting either of those donations.

ix. New York Life Insurance Company

1. Background

New York Life Insurance Company ("New York Life") is one of the largest mutual life insurance companies in the United States, with reported total revenue of $21.1 billion in 2007.[245] New York Life Foundation is a private foundation, which is funded by New York Life.[246]

Sy Sternberg was the CEO of New York Life from 1997 until June 2008, and served as Chairman of its Board of Directors until 2009.[247] Ted Mathas has been CEO since June 2008 and Chairman of the Board since 2009.[248] Christine Park is the current President of the New York Life Foundation, and was preceded in that role by Peter Bushyeager.[249] Sheila Davidson is Executive Vice-President and General Counsel of New York Life.[250] George Nichols has been Senior Vice-President in charge of government affairs since January 2007.[251] Nichols is a federally-registered lobbyist, and oversees the work of all of New York Life's lobbyists.[252]

2. Solicitations of New York Life

Respondent sent a letter to Sternberg at New York Life Foundation in June 2005.[253] Respondent personalized the letter, writing "Sy" over the typed salutation. There apparently was some contact between New York Life Foundation and CCNY as CCNY forwarded a list of naming opportunities to the Foundation.[254] By August of 2005, New York Life had decided not

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[241] Exhibit 338.
[242] Exhibit 339.
[243] Exhibit 340.
[244] Exhibit 341.
[245] Exhibit 372.
[246] *See* Exhibit 459; Nichols Tr. at 7.
[247] Exhibit 459.
[248] *Id.*
[249] Nichols Tr. at 21-22.
[250] Nichols Tr. at 6.
[251] Nichols Tr. at 9.
[252] Nichols Tr. at 4.
[253] Exhibit 445.
[254] Exhibit 446.

to provide funding to the Rangel Center.[255] Bushyeager reported that the decision was made because "Sy felt we had done enough for Congressman Rangel."[256]

In June 2007, Respondent spoke with Nichols about contributing to the Rangel Center.[257] Nichols introduced Respondent at a breakfast campaign fundraiser, which was hosted by the American Council of Life Insurers.[258] Following the breakfast, Nichols had a brief conversation with Respondent, as Nichols described:

> After the breakfast is over, the niceties are, Chairman Rangel, thank you for being here, we appreciate you taking the time out to come and see us. If there is anything we can ever do for you, let us know. He said, yes, there is, as they often do. I would like New York Life to consider contribution to the Rangel Center.[259]
>
> . . .
>
> That was extent of the conversation. I said, we will. And he said, I'll have one of my staff give you a call.[260]

After that conversation, New York Life did discuss a possible contribution. Davidson wrote, "I think it should be revisited with Sy in light of the passage of time and Rangel's ascent to the chair of the Ways and Means Committee."[261] Sternberg again decided to pass on funding the Rangel Center, in part because New York Life had recently made a $10 million donation to the Colin Powell Center at CCNY.[262] Nichols wanted to pursue funding, stating:

> I think we should do something for Rangel for the reasons stated by Sheila. Additionally, Rangel has been a friend of the company for 25+ years and yes we have contributed to his political causes. But, we have also benefited from his position, policy decisions and legislation.[263]

Park and Nichols decided to wait until further information could be obtained before taking the issue back to Sternberg.[264] Nichols was never contacted by anyone from Respondent's office, and New York Life did not further pursue funding of the Rangel Center.[265]

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[255] Exhibit 447.
[256] Exhibit 457.
[257] Nichols Tr. at 34; Exhibit 457.
[258] Nichols Tr. at 34.
[259] Nichols Tr. at 34.
[260] Nichols Tr. at 34-35. Nichols testified that no one from Respondent's staff ever contacted Nichols regarding the Rangel Center. Nichols Tr. at 35.
[261] Exhibit 457.
[262] *Id. See also* Nichols Tr. at 17-18.
[263] Exhibit 457.
[264] *Id.*
[265] Nichols Tr. at 54.

3. New York Life's interests and business before the House

New York Life, like Verizon, is a large corporation that, in the ordinary course of its business, has an interest in pending legislation. Lobbying disclosure forms report that New York Life also spends millions of dollars each year on lobbyists.[266]

For example, New York Life's Lobbying Disclosure Statement for year end 2007 identifies 10 specific House bills lobbied on, as well as 7 specific Senate bills.[267] Issues lobbied on included, *inter alia*: insurance regulation; the tax treatment of long-term care insurance, estate assets, and lifetime income annuities; and international trade agreements.[268]

Documents produced by New York Life demonstrate the interactions between representatives of New York Life and Respondent and his staff, including, inter alia:

- April 21, 2005 meeting between Sternberg, Mathas, and Respondent. A briefing memorandum to Sternberg and Mathas states, "You should catch up with Charlie, especially on estate tax reform . . . It is also worth reminding him of our international operations."[269]

- June 19, 2006 fundraiser luncheon for Respondent attended by Sternberg, Colgate, Nichols, and several other representatives of New York Life. The briefing memorandum prepared for Sternberg suggested the agenda for the luncheon includes a thank you to Respondent for helping to fight estate tax repeal, a discussion of the status of the pension conference, free trade agreements, and the issue of tax reform.[270]

- March 12, 2007 meeting between Sternberg and Respondent on the issue of deferred compensation. A report of the meeting indicated that they also discussed trade, and that Respondent "made a big appeal for the private sector to step up and do more in terms of community investment, scholarships, health care recommendations, visa/essential worker issues, etc."[271]

- May 2007 meeting between Melvin Feinberg, a representative of New York Life, and Respondent as part of an AALU conference. Feinberg reported, "When I mentioned [to Respondent] that I was from New York Life, the Congressman told

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[266] *See, e.g.*, Exhibit 463 (Lobbying Disclosure form filed by New York Life for the second quarter of 2008 indicating in-house lobbying expenses of $1.2 million).
[267] Exhibit 461.
[268] *Id.*
[269] Exhibit 544.
[270] Exhibit 450.
[271] Exhibit 453.

me to tell you he's working on your trade package. We spent more than an hour discussing insurance and tax issues with Congressman Rangel's staffer, Jonathon Sheiner."[272]

- May 2007 fundraiser for Respondent attended by Jon Paone, the head of New York Life's political action committee.[273] Paone reported that "I congratulated Charlie on his trade agreement with the WH. Charlie then told me that Sy needs to keep his end of the bargain and lobby just as hard to win approval for Korea and Columbia FTAs. Charlie then said that BRT needs to live up to its commitment by supporting education improvements (presumably increased funding). He pointedly asked me to deliver that message to SY and the BRT."[274]

- May 2007 ACLI breakfast fundraiser, at which Nichols introduced Respondent. At the fundraiser, Respondent discussed tax reform and ways to raise revenues as offsets to certain tax and programs such as Medicaid and SCHIP.[275]

- July 2007 letter from Sternberg to Respondent urging support of a free trade agreement with Columbia.[276]

x. AIG

1. Background on AIG

American International Group, Inc. (AIG) engages in a broad range of insurance and insurance-related activities both domestically and internationally. It also has significant activity in the financial services and asset management fields.[277] AIG received a substantial government bailout beginning in 2008.[278]

During the period at issue here, Ned Cloonan was the vice-president of corporate and international affairs at AIG.[279] He was responsible for the international side of the business and political affairs, including AIG's political action committee.[280] Cloonan was also a federally-

[272] Exhibit 454.
[273] Exhibit 455; Nichols Tr. at 23.
[274] Exhibit 455.
[275] Exhibit 456.
[276] Exhibit 458.
[277] Exhibit 505.
[278] *Id.*
[279] Cloonan Tr. at 50.
[280] *Id.*

registered lobbyist.[281] He oversaw the work of other federally-registered lobbyists for AIG.[282] Cloonan also led AIG's corporate giving program.[283]

2. Solicitations of AIG

In early 2006, Respondent suggested that Butler contact AIG about the Rangel Center.[284] After introducing AIG and CCNY, Respondent apparently followed the progress of their discussions. A May 2006 "Trip Report" from AIG lobbyists discussed a meeting with Rangel and his staff, noting that "George [Dalley] asked for occasional updates on our discussion on the Rangel Center."[285] A February 2007 "DC Trip Report" from AIG lobbyists indicated that Dalley again asked about the "CUNY/Rangel Center."[286]

The discussions between AIG and CCNY extended over a period of approximately two years. AIG was considering a gift of either $5 million or $10 million, and considered a number of uses for those funds, including funding the Rangel Center building.[287] AIG raised concerns early in the process about the potential headline risk of coupling a corporate name with a sitting politician.[288]

It appears that Respondent and his staff also had discussions with CCNY regarding the potential AIG contribution. Butler's notes from a meeting on August 2, 2006 with members of Respondent's staff contain some reference to AIG, with one of the notes stating "send them AIG proposal without names."[289] A later entry from those notes states, "Congressman wants whole $10 Million for Rangel Center."[290]

Respondent was aware that AIG had business before the Ways and Means Committee.[291] He expressed concern about that fact, indicating that he wanted to keep the legislative part separate from the Rangel Center.[292] In March 2007, Capel told Butler that it was acceptable to ask for a meeting for Williams and Butler, but not one that would include Respondent.[293]

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[281] *Id.* at 7-8.
[282] *Id.*
[283] *Id.* at 14.
[284] Exhibits 462, 468, and 109.
[285] Exhibit 467.
[286] Exhibit 481.
[287] *See, e.g.*, Exhibit 473.
[288] Exhibits 473, 474, 477.
[289] Exhibit 476.
[290] *Id.* There is no evidence to suggest that any other donor or potential donor Respondent solicited considered, in any serious way, a gift at the $10 million level for the Rangel Center.
[291] Exhibit 109.
[292] *Id.*
[293] *Id.* At that point, CCNY officials had already met with AIG representatives on several occasions. Exhibit 498.

Capel further instructed Butler not to send a letter to AIG.[294]

At some point in time, Butler began working with Dalley and Berger to schedule a meeting with Respondent and AIG, notwithstanding the earlier admonition not to schedule such a meeting.[295] After earlier attempts to schedule a meeting in late 2007, Butler raised the subject of a meeting with Respondent to Cloonan again in February 2008 stating that:

> Congressman Rangel has expressed a wish to meet with the folks from AIG together with President Williams about engaging AIG in the wonderful work of the Rangel Center. Dan Berger of Congressman Rangel's office will be contacting you about finding a time that is convenient for everyone.[296]

A meeting between Respondent, AIG officials, and CCNY officials was eventually scheduled for April 21, 2008.[297] In advance of that meeting, Butler prepared a briefing memo for Respondent.[298] That memo states that the objective of the meeting is to "Close $10M gift for the Rangel Center to create AIG Hall."[299]

Butler sent an email to Berger, Dalley, and Capel confirming the meeting with AIG, stating, "the Chairman doesn't need to make the case – we already have our proposal in. His presence is all that is needed – that will send the message."[300] Butler testified that she requested that Respondent attend the meeting because she "was hoping to jump start the gift."[301]

While CCNY thought it was close to closing the deal with AIG, the company had concerns, including headline risk.[302] Cloonan was concerned that AIG was being asked to give a significant amount of money to something that CCNY seemed to be "building on the fly."[303] AIG did not feel that the Rangel Center fit well with AIG's primary area of interest – math and science education.[304] Cloonan did not want to meet with Respondent regarding the Rangel Center, but, "out of respect for the Congressman and also for his position," he agreed to a meeting.[305]

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[294] Exhibit 109.
[295] Exhibit 490.
[296] Exhibit 497.
[297] Exhibit 499.
[298] Exhibit 499.
[299] *Id.*
[300] *Id.*
[301] Butler Tr. at 35.
[302] Exhibit 473.
[303] Cloonan Tr. at 50; Exhibit 473.
[304] Cloonan Tr. at 14, 24; Exhibit 473.
[305] Cloonan Tr. at 31.

Cloonan described the April 21, 2008 meeting with Respondent as "awkward."[306] He testified that at the beginning of the meeting, Respondent asked, "Well, Ned, are we here for a celebration or not?"[307]

Cloonan raised concerns, particularly about the headline risk and the fact that Respondent was the sitting Chairman of the Ways and Means Committee.[308]

Butler's notes from the meeting indicate that Respondent asked, at least twice, what do we need to do to get this done.[309] Respondent also reportedly said that he could handle the headline risk.[310] AIG did not contribute.[311]

3. AIG's interests and business before the House

Like the other major corporations, AIG routinely has an ongoing interest in legislation and oversight activities of Congress. During 2008, the year in which Respondent personally met with AIG regarding the Rangel Center, AIG was significantly affected by actions of the government, including Congress.[312]

Throughout the time period that discussions between CCNY and AIG were ongoing, lobbying disclosure forms demonstrate, as with other corporations, AIG spent millions of dollars to lobby Congress. For example, AIG's Lobbying Disclosure Statement for the second quarter of 2008 identifies 11 specific House bills lobbied on, as well as 10 specific Senate bills.[313] Issues lobbied on included, *inter alia*: financial services regulatory reform; housing foreclosure issues; tax issues including subpart F exemption; and numerous international trade issues.[314]

Documents produced by AIG further demonstrate AIG's relationship with Respondent and his staff:

- January 26, 2005, fax from AIG lobbyist Ed Lee transmitting a draft letter to the Prime Minister of Vietnam regarding trade issues and stating "we hope that Speaker Hastert and Congressman Rangel might consider signing off on."[315]

- October 3, 2005, written testimony to the Ways and Means Committee from an AIG executive regarding the United States-Bahrain Free Trade Agreement.[316]

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[306] *Id.*
[307] Cloonan Tr. at 32.
[308] *Id.*
[309] Exhibit 503.
[310] Cloonan Tr. at 67.
[311] Cloonan Tr. at 62-63.
[312] *See, generally*, Exhibit 505.
[313] Exhibit 504.
[314] *Id.*
[315] Exhibit 464.

- An AIG Corporate Affairs' Summary of Projects and Initiatives for the first quarter of 2007 included an entry for Respondent: "Charlie Rangel. Our long standing relationship with Rangel will help on tax and trade matters and in fact, we are sitting down with the Tax Department next week about their tax policy issues."[317]

- March 15, 2007, letter from Respondent to an AIG executive thanking him for meeting with Ways and Means Committee staff regarding a nonqualified deferred compensation provision contained in a pending bill.[318]

- June 26, 2007, memo to Cloonan from AIG lobbyists titled "Plane Ride to Ireland" states:

  > Charlie Rangel. Rangel is on an anti-China rant (not personal to AIG). George Daly [sic] said it was a "rhetorical tool". This stems from a private meeting with Wu Yi and how she disrespected Rangel. We have scheduled a fundraiser for Rangel in September.[319]

- July 2, 2007, AIG internal email regarding a free trade agreement with Korea and Respondent's announcement that he could not support the agreement as negotiated. The email raised the possibility of calling Tim Reif [then Chief Democratic Trade Counsel for Ways and Means] to see what could be done "to get Rangel back on board."[320]

- September 24, 2007, invitation to an AIG political fundraiser for respondent states:

  > Congressman Rangel is a good friend and frequent visitor to AIG. He is Chairman of the House Ways and Means Committee, one of the most powerful positions in Congress. This Committee has jurisdiction over a wide range of issues important to AIG including, taxes, trade and social security.[321]

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[316] Exhibit 466.
[317] Exhibit 478.
[318] Exhibit 482.
[319] Exhibit 485. The same memo references the "CCNY/Rangel Center" and states "$10M over five years. Part of the money can come from the OTS settlement."
[320] Exhibit 486.
[321] Exhibit 488.

- October 25, 2007, AIG internal email regarding the "Mother of All Tax Bills Update." One lobbyist informs another "If you have anything of concern regard Rangel, pls. let Ned know. He knows him personally."[322]

- November 9, 2007, AIG internal email regarding tax legislation recently proposed by Respondent that would have "significant impacts" on individual and corporate taxpayers.[323]

- January 18, 2008, letter from the Active Financing Working Group to leadership in the House and Senate, including Respondent, seeking the extension of subpart F rules applicable to financial services business income.[324]

II. Respondent's Financial Disclosure Statement and Income Tax Issues

Respondent's Financial Disclosure statements for the years 1998 through 2008 contained numerous errors and omissions, including failure to disclose rental and other unearned income, understating rental income and other unearned income, failure to disclose earned income, failure to disclose a liability, and failure to disclose a reportable position. Respondent's August 2009 amendments made over 200 changes to his previously filed Financial Disclosure statements for the years 1998 through 2007.

a. Punta Cana

Respondent purchased a villa at the Punta Cana Yacht Club in 1987.[325] Respondent withdrew funds from a retirement account to finance a down payment on the villa.[326] The remaining balance was financed by a mortgage, which required quarterly payments for seven years at 10½ percent interest.[327]

Respondent is entitled to use the villa for up to nine weeks per year.[328] For the remaining weeks, it can be rented out by the resort, with the proceeds from those rentals going into a rental pool.[329] The total rental pool is determined by taking all revenues from the gross rentals of all the units.[330] From that amount, deductions are made for agent commissions, Dominican Republic

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[322] Exhibit 489.
[323] Exhibit 491.
[324] Exhibit 495.
[325] Exhibits 073, 067.
[326] Exhibit 073.
[327] *Id.*
[328] Exhibit 067.
[329] *Id.*
[330] Exhibit 070.

taxes, and a 10% maintenance fee.[331] From that balance, 53% is paid to Punta Cana and 47% is paid to the owners in the rental pool.[332] Each owner's share of the rental pool payments is determined on a point system, with a 3-bedroom beach villa receiving 3 points.[333] All of the owners' points are totaled, and each owner's share of the rental pool income is based on that owner's number of points as a percentage of all points.[334]

Initially, Respondent would write a check for the mortgage payment and send it to Punta Cana.[335] Once the resort became more fully operational, rental pool payments were applied to offset mortgage payments.[336] Respondent stopped sending checks to cover the required mortgage payments.[337] The rental pool payments were not sufficient to cover the amount of the required mortgage, so the mortgage was not paid off during the 7-year period as anticipated.[338] At some point in late 1992 or early 1993, the management of Punta Cana decided to eliminate any remaining interest due on the mortgages of Respondent and other early investors.[339] In 2009 Respondent's rental pool earnings paid off his original mortgage and the financing of a third bedroom addition.[340]

When Respondent first purchased the Punta Cana villa, he reported the purchase on his Financial Disclosure Statement for the year 1987, although he assigned an incorrect value to the property.[341] He neglected to report the distribution from his retirement account used to finance the down payment and the mortgage that he obtained on the property.[342] He submitted an amendment on June 10, 1988, re-categorizing the purchase.[343] Respondent issued a statement in February 1989 regarding his failure to include the Punta Cana-related items, stating that he "amended my Financial Disclosure to include these items as soon as the oversight was brought to my attention."[344] His statement acknowledged that retirement account distributions and the Punta Cana mortgage should have been disclosed on his Financial Disclosure Statement.[345]

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[331] *Id.*
[332] *Id.*
[333] Exhibit 069.
[334] *Id.*
[335] Exhibit 074.
[336] *See, e.g.*, Exhibit 77.
[337] Rangel Tr. at 23-28, 125.
[338] *Id.* at 18-19.
[339] *Id.* at 14-17.
[340] Rangel Tr. at 133-34.
[341] Exhibit 071.
[342] *Id.*
[343] *Id.*
[344] Exhibit 073. The June 10, 1988, letter amendment did not, in fact, disclose the retirement account distribution or the mortgage.
[345] Exhibit 073.

Beginning in 2003, Respondent's Financial Disclosure Statements did not include the mortgage on Punta Cana, despite the fact that the liability was not fully paid until 2009.[346]

Respondent reported income from Punta Cana on his Financial Disclosure Statements for some years, but not others. He did not report any Punta Cana income on his original income tax returns.[347] The following chart sets forth how the Punta Cana rental income was reported on the various filings:

	Original Financial Disclosure	**Original Tax Returns**	**Amended Financial Disclosure**	**Amended Tax Returns**
1998	None[348]	Not reported[349]	$5,001 - $15,000[350]	N/A[351]
1999	None[352]	Not reported[353]	$2,501 - $5,000[354]	N/A
2000	None per letter amendment[355]	Not reported[356]	$2,501 - $5,000[357]	N/A
2001	$5,001 - $15,000[358]	Not reported[359]	$2,501 - $5,000[360]	N/A
2002	$5,001 - $15,000[361]	Not reported[362]	$2,501 - $5,000[363]	N/A
2003	$5,001 - $15,000[364]	Not reported[365]	$2,500 - $5,000[366]	N/A
2004	$2,501 - $5,000[367]	Not reported[368]	$5,001 - $15,000[369]	$5,030[370]

[346] Exhibits 008, 009, 011, 012, 013.
[347] *Id.*
[348] The term "None" is used where Respondent specifically checked the box on his FD statements that the income produced by the asset was "None." *See, e.g.*, Exhibit 002.
[349] Exhibit 028.
[350] Exhibit 014.
[351] Respondent did not file amended tax returns for years prior to 2004.
[352] Exhibit 003.
[353] Exhibit 032.
[354] Exhibit 015.
[355] Exhibit 005.
[356] Exhibit 036.
[357] Exhibit 016.
[358] Exhibit 006.
[359] Exhibit 040.
[360] Exhibit 017.
[361] Exhibit 007.
[362] Exhibit 043.
[363] Exhibit 018.
[364] Exhibit 008.
[365] Exhibit 048.
[366] Exhibit 019.
[367] Exhibit 009.
[368] Exhibit 053.
[369] Exhibit 020.
[370] Exhibit 055.

	Original Financial Disclosure	Original Tax Returns	Amended Financial Disclosure	Amended Tax Returns
2005	$2,501 - $5,000[371]	Not reported[372]	$5,001 - $15,000[373]	$6,280[374]
2006	None[375]	Not reported[376]	$5,001 - $15,000[377]	$8,467[378]
2007	None[379]	$7,800[380]	$5,001 - $15,000[381]	$7,800[382]

Table 2 – Punta Cana Rental Income

When Respondent filed his initial Financial Disclosure Statement for the year 2000, he failed to check any box under the "amount of rental income" box for Punta Cana.[383] In June 2001, Respondent wrote a letter to the Standard's Committee amending his Financial Disclosure statement for the year 2000.[384] In that letter he stated:

> Thank you for calling to inform me of the omission in my recent Financial Disclosure Statement of information concerning the income derived during the year 2000 from the two properties in New York City and the Dominican Republic jointly owned by my wife and me and the New England Mutual Life Insurance policy listed by me as assets in the report. There was no income derived by us from these assets during the year 2000 and that fact should have been noted in my Financial Disclosure Statement.[385]

Dalley testified that Respondent made a decision to not include the income in the Financial Disclosure Statements and income tax returns:

> Mr. Rangel has always been consistent, and I'll state it because it may be relevant, in a feeling that there was no income generated

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[371] Exhibit 011.
[372] Respondent did not file a Schedule E with his 2005 return.
[373] Exhibit 021.
[374] Exhibit 057.
[375] Exhibit 012.
[376] Respondent did not file a Schedule E with his 2006 return.
[377] Exhibit 022.
[378] Exhibit 060.
[379] Exhibit 013.
[380] Exhibit 060.
[381] Exhibit 023.
[382] Exhibit 063.
[383] Exhibit 004.
[384] Exhibit 005.
[385] *Id.*

> because he never received a check. That's been his point of view.[386]
>
> I didn't have any alternative information, and Mr. Rangel felt more comfortable with the statement that there was no income because he still had not received any checks.[387]
>
> The Rangels, I know this from conversation with them, were not settled in their own minds as to whether they owned the property and therefore had income to declare.[388]

Respondent likewise testified that, with respect to his income tax returns, he had a "misguided, inappropriate view" regarding the income because he had not received any check or direct income.[389] But when asked whether he realized the income should have been reported on his Financial Disclosure Statements, he testified that "[h]ad I paid attention to that, there is no question I would have come to that conclusion."[390] Neither Respondent nor Dalley ever requested guidance from the Standards Committee regarding the treatment of the income.[391] Nor did Respondent ever request assistance from his accountants.[392]

At one point, it was clear to Respondent that he was required to report the income. In January of 1993 he wrote to Rainieri at the resort, requesting information on his villa:

> I hope you can provide me with a copy of the contract we have with Punta Cana which includes the third bedroom addition, what equity has accrued and if there is an outstanding balance. As I mentioned to you, the House Ethics Committee requires the disclosure by members of Congress of any assets and unearned income and while I enjoy a good relationship with the Committee's Chairman it certainly would be politically embarrassing if I were unable to provide an accurate accounting of my holdings.[393]

Despite the fact that Respondent realized, in 1993, that he was required to report the income on his Financial Disclosure Statements, he could not identify any steps that he took on an

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[386] Dalley Tr. (12/09/08) at 11.
[387] Dalley Tr. (12/09/08) at 11.
[388] Dalley Tr. (12/9/08) at 16.
[389] Rangel Tr. at 136.
[390] Rangel Tr. at 125-126.
[391] Dalley Tr. (12/09/09) at 16.
[392] Rangel Tr. at 136.
[393] Exhibit 076.

annual basis to ensure that he had that information.[394] While Respondent did disclose the income in some years, even those disclosures were inaccurate.[395]

Respondent has also claimed that a lack of documentation affected his reporting of Punta Cana income. Respondent initially said that he "received no communication for the income."[396] Documents produced by Respondent demonstrate numerous communications from the resort, including statements of account showing exactly how much income he had received the previous quarter.[397] In addition, Rainieri testified that the resort sent statements every six months showing the amount of income for the period immediately preceding the statement.[398] Respondent confirmed that he remembered receiving some of these statements.[399]

The documents show that statements sent to Respondent were predominantly in English, but did include some portions in Spanish.[400] In his testimony, Respondent focused on the Spanish portions of the statements, despite the fact that the statements contained the necessary information in English:

> Q: Is this one of the statements you referred to earlier [that] you would receive on occasion?
>
> A: Yes, ma'am. In Spanish.
>
> Q: Well, the first page is in English, correct?
>
> A: The second page is in Spanish.
>
> Q: On that first page, in the letter, it states that "Please find enclosed your statement of account as of June 30, 1996, for the CO owners' rental pool that shows a total net income of U.S. $3,294.95."
>
> A: That is what I omitted to file.[401]

Respondent made numerous errors in the reporting of Punta Cana, including errors and omissions in reporting rental income and failure to report the mortgage on the property.

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[394] Rangel Tr. at 136.
[395] *See* Table 2, *supra*.
[396] Exhibit 541.
[397] Exhibits 075-086.
[398] Rainieri Tr. at 28.
[399] Rangel Tr. at 141.
[400] *See, e.g.*, Exhibit 079.
[401] Rangel Tr. at 141.

b. Brownstone

Respondent was raised in a brownstone located in 74 West 132nd Street in New York ("Brownstone").[402] Prior to his marriage, Respondent converted the property into six apartments.[403] Respondent and his wife lived in one of the apartments and the remaining apartments became rental properties.[404] Respondent sold the Brownstone in 2004.[405]

Respondent reported rental income from the Brownstone on his Financial Disclosure Statements for some years, but not others.[406] For the years in which he did report rental income, he significantly understated the amount of income.[407] Respondent's original Federal income tax returns reported rental income that was significantly higher than reported on his FD statements, as illustrated by the following chart:

	Brownstone - Original Financial Disclosure	**Brownstone - Original Tax Returns**
1998	None[408]	$29,852[409]
1999	None[410]	$20,449[411]
2000	None[412]	$28,938[413]
2001	$2,501 - $5,000[414]	$21,416[415]
2002	$2,501 - $5,000[416]	$19,603[417]
2003	$2,501 - $5,000[418]	$23,036[419]
2004	None[420]	$3,406[421]

Table 3 – Brownstone Income

[402] Rangel Tr. at 118-119.
[403] Rangel Tr. at 152.
[404] Rangel Tr. at 153-154.
[405] Rangel Tr. at 154-155
[406] *See* Table 3, *infra.*
[407] *Id.*
[408] Exhibit 002.
[409] Exhibit 028.
[410] Exhibit 003.
[411] Exhibit 032.
[412] Exhibit 004.
[413] Exhibit 036.
[414] Exhibit 006.
[415] Exhibit 040.
[416] Exhibit 007.
[417] Exhibit 044.
[418] Exhibit 008.
[419] Exhibit 048.
[420] Exhibit 009.
[421] Exhibit 053.

When Respondent filed his initial Financial Disclosure Statement for the year 2000, he failed to check any box under the "amount of rental income" for the Brownstone.[422] In June 2001, Respondent wrote a letter to the Standard's Committee amending his Financial Disclosure statement for the year 2000.[423] In that letter he stated:

> Thank you for calling to inform me of the omission in my recent Financial Disclosure Statement of information concerning the income derived during the year 2000 from the two properties in New York City and the Dominican Republic jointly owned by my wife and me and the New England Mutual Life Insurance policy listed by me as assets in the report. There was no income derived by us from these assets during the year 2000 and that fact should have been noted in my Financial Disclosure Statement.[424]

In fact, the Brownstone had generated almost $29,000 in income during the year 2000.[425] That income was reported on Respondent's Federal income tax return for that year, indicating that records of that income were available to Respondent.[426]

c. Other Assets

Respondent's original Financial Disclosure Statements failed to disclose numerous other assets, including stock and mutual fund holdings. The following are examples of some of the omitted assets:

1) Respondent failed to disclose his holdings at Congressional Federal Credit Union ("CFCU") for the years 1998, 1999, 2000, 2004, 2005, 2006, and 2007.[427] Respondent disclosed his holdings for the years 2001, 2002, and 2003, but estimated the value of the accounts in the range of $15,001- $50,000.[428] The holdings at CFCU were, in fact, valued in the range of $100,001 - $250,000 for years 1998 through 2006, and valued in the range of $250,001 - $500,000 for the year 2007.[429] CFCU issued Fair Market Value Reports on an annual basis,

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[422] Exhibit 004.
[423] Exhibit 005.
[424] Exhibit 005.
[425] Exhibit 036.
[426] *Id.*
[427] Exhibits 002, 003, 004, 009, 011, 012, 013. The Congressional Federal Credit Union ("CFCU") is a federal credit union providing membership to Members of the House of Representatives and staff. It has offices in several locations within the Capitol grounds, including the Rayburn and Longworth office buildings. *See generally* Congressional Federal Credit Union, http://www.congressionalfcu.org (last visited November 4, 2010).
[428] Exhibits 006-008.
[429] Exhibits 014-023.

providing the fair market value of the account at year-end.[430] Respondent reported earnings related to the CFCU accounts on his Federal income tax returns for each of the years 1998 through 2007.[431]

2) Respondent failed to report holdings of stocks in corporations in various years including Bell Atlantic, BellSouth, Niagara Mohawk Holdings, Verizon Communications, PepsiCo, and Yum! Brands. Respondent reported earnings related to certain stock transactions on his related Federal income tax returns. For example, Respondent reported a capital gain associated with the sale of stock in BellSouth Corporation on his 1998 tax return.[432]

3) Respondent failed to report holdings of mutual funds in various years including Alliance Municipal Income Fund, Rochester Municipal Fund, ING Principal Protection Fund, and iShares Dow Jones Select Dividend Income Fund. Respondent reported earnings related to certain mutual fund holdings on his corresponding Federal income tax return. For example, Respondent reported a capital gain related his holdings in the ING Principal Protection Fund on his 2007 tax return.[433]

4) Respondent failed to disclose his holdings in Merrill Lynch Allianz Global Investors Fund in 2006 and 2007. The holding was purchased in 2006 with a value in the range of $250,001 - $500,000.[434] Respondent's tax returns for those years report interest and dividends from Merrill Lynch accounts, but do not identify specific funds.[435]

[430] *See, e.g.*, Exhibit 024.
[431] Exhibits 026, 030, 034, 038, 042, 046, 050, 056, 058, 061.
[432] Exhibit 027.
[433] Exhibit 062.
[434] Exhibits 058, 059, 061.
[435] Exhibits 058, 061.

d. Earned Income

Respondent did not report any earned income on his original Financial Disclosure statements for the years 1998 through 2007. On his amended statements, he reported earned income for most of those years related to retirement distributions from his IRAs as follows:

Year	Source	Amount
1998	Congressional FCU IRA	$13,333[436]
2000	Congressional FCU IRA	$6,144[437]
2001	Congressional FCU IRA	$8,693[438]
	Merrill Lynch IRA	$4,235[439]
2002	Congressional FCU IRA	$4,177[440]
2004	Congressional FCU IRA	$4,438[441]
2005	Congressional FCU IRA	$4,486[442]
2006	Congressional FCU IRA	$4,187[443]
2007	Congressional FCU IRA	$5,509[444]

Table 4 – Earned Income

This income was reported on some of Respondent's tax returns.[445] In his 1989 press statement regarding Punta Cana, Respondent acknowledged that a retirement account distribution should

[436] Exhibit 014.
[437] Exhibit 016.
[438] Exhibit 017.
[439] *Id.*
[440] Exhibit 018.
[441] Exhibit 020.
[442] Exhibit 021.
[443] Exhibit 022.
[444] Exhibit 023.
[445] *See, e.g.*, Exhibits 025, 037, 041, 049, 054.

have been reported on his Financial Disclosure Statement.[446] He knew of the reporting requirement, but failed to comply with that requirement.

e. Transactions

Respondent failed to report a substantial number of transactions on his Financial Disclosure Statements. Transactions that were not reported on Respondent's Financial Disclosure Statements include the following examples:

1) Respondent failed to disclose the sale of holdings in BellSouth in 1998.[447] Respondent reported a capital gain related to that transaction on his Federal income tax return for 1998.[448]

2) Respondent failed to disclose the purchase in 2002 of holdings in ING Principal Protection in the range of $50,001 - $100,000.[449]

3) Respondent failed to disclose the purchase and sale during 2004 of Calvert Tax Free Reserves, Eaton Vance Insured New York Municipal Bond Fund, and Nuveen New York Quality Income Municipal Fund.[450] Each of those transactions was valued in the range of $50,001 - $100,000.[451] Each was reported on Respondent's Federal income tax return for 2004.[452]

4) Respondent failed to disclose the purchase and sale of Merrill Lynch Institutional Tax-Exempt Fund during 2006 in the range of $250,001 - $500,000.[453] Respondent reported some interest on Merrill Lynch tax-exempt funds on his Federal income tax return for 2006, but the specific funds were not identified.[454]

f. Reportable Positions

The EIGA requires filers to disclose certain positions, including positions such as officer, director or trustee of an organization, including nonprofit organizations.[455] Respondent is a

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[446] Exhibit 073.
[447] Exhibit 002.
[448] Exhibit 027.
[449] Exhibit 007. There was no reporting of this fund on Respondent's 2002 income tax return, and reporting likely was not required if there was no income generated from the fund for that year.
[450] Exhibit 009.
[451] Exhibit 052.
[452] *Id.*
[453] Exhibit 012.
[454] Exhibit 058.
[455] EIGA at § 102(a)(1)(6)(A).

trustee of the Ann S. Kheel Charitable Trust, and has been since 2004.[456] Respondent reported a position with the Kheel Trust for the years 2004 through 2007.[457] He failed to report his position with the Kheel Trust on his Financial Disclosure Statement for the year 2008.[458] Respondent has yet to amend that filing to include his position with the Kheel Trust.

III. Respondent's Non-Conforming Use of a Residential Apartment for Campaign Purposes

a. Background of Lenox Terrace, Olnick Organization and Hampton Management

During the relevant period, 2003 through present, Respondent was a resident in the 40 West 135th Street building of the Lenox Terrace complex in Harlem, NY.[459] The Lenox Terrace complex was built in 1958 and consists of six buildings and over 1,700 apartments.[460] According to the 1961 Certificate of Occupancy for 40 West 135th Street, the building is located in a residence and retail use district.[461] The Lenox Terrace Building is located in a C-1 commercial overlay district.[462]

The Olnick Organization ("Olnick") is a developer of residential, commercial and hotel properties in New York City, including Lenox Terrace.[463] Hampton Management has provided property management services on behalf of the Olnick Organization for more than 40 years, including management of Lenox Terrace during the relevant period.[464]

b. Respondent's Tenancy in Lenox Terrace

Respondent has been a tenant at Lenox Terrace since 1988.[465] Respondent leased three residential apartments in the 40 West 135th Street building of the Lenox Terrace complex, apartment 16N-P, apartment 16M, and apartment 10U.[466] The standard leases used by Lenox Terrace direct tenants, "[y]ou shall use the Apartment for living purposes only.[467] Respondent has maintained apartment 16N-P and apartment 16M as his personal residence since signing the original leases.[468]

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[456] Exhibit 388.
[457] Exhibits 009, 011, 012, 013. Respondent used different names for the Kheel Trust, but presumably they all refer to the Ann S. Kheel Charitable Trust.
[458] Exhibit 064.
[459] Rangel Tr. at 180; *see also* Exhibit 536.
[460] Olnick Organization Home Page, http://www.olnick.com.
[461] Exhibit 507.
[462] Exhibit 532.
[463] Olnick Organization Home Page, http://www.olnick.com.
[464] Olnick Organization Home Page, http://www.olnick.com.
[465] Rangel Tr. at 176, 180.
[466] Rangel Tr. at 183, 187-88.
[467] *See e.g.*, Exhibit 508.
[468] Rangel Tr. at 177, 183, 192; *see also* Exhibit 536.

On October 16, 1996, Respondent signed a lease for the use of apartment 10U in the 40 West 135th Street building.[469] Respondent's tenancy in apartment 10U began on November 1, 1996.[470] The lease directs Respondent, "[y]ou shall use the Apartment for living purposes only. The Apartment may be occupied by the tenant or tenants named above and by the immediate family of the tenant or tenants and by occupants as defined in and only in accordance with Real Property Law §235-f."[471] The lease further states that Respondent, "cannot assign this Lease or sublet the Apartment without Owner's advance written consent in each instance to a request made by You in the manner required by Real Property Law §226-b. and in accordance with the provisions of the Rent Stabilization Code and Law, relating to subletting."[472] The lease also recognizes that owner's right to "refuse to consent to a lease assignment for any reason for any reason or no reason, but if Owner unreasonably refuses to consent to request for a Lease assignment properly made, at your request in writing, Owner will end this lease effective as of thirty days after your request."[473] Respondent's lease for apartment 10U was renewed until he moved out and the lease terminated on October 31, 2008.[474]

Respondent testified that he always used apartment 10U exclusively as a campaign office.[475] Throughout Respondent's tenancy in apartment 10U, rent was paid for the apartment on Rangel for Congress of National Leadership PAC checks.[476]

Walter Swett served as Executive Director for Respondent's campaign, Rangel for Congress, and his leadership political action committee, National Leadership PAC.[477] Documents provided by Olnick indicate that Swett periodically emailed Hampton management employees regarding maintenance requests for Respondent's campaign office in apartment 10U.[478] Rangel campaign staffers also periodically emailed Olnick President Bruce Simon to keep him abreast of campaign events and news.[479] Several of these email communications included an email signature "Walter Swett/Rangel Campaign/40 West 135th Street – Suite 10U/New York, NY 10037."[480] After newspaper articles surfaced regarding Respondent's use of

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[469] Exhibit 508.
[470] *Id.*
[471] *Id.*
[472] Exhibit 508.
[473] *Id.*
[474] *See* Exhibits 508-11, 515. Although Olnick did not provide a copy of a lease renewal form for 2004, Olnick documents indicate that Respondent was in possession of apartment 10U in both 2004 and 2005 (Exhibits 512 and 513) and that Respondent renewed his lease again in 2006 (Exhibit 515). The 2006 lease renewal form, dated June 24, 2006, indicated that Respondent's current lease would expire on October 31, 2006.
[475] Rangel Tr. at 187-189.
[476] *See e.g.*, Exhibit 527; *see also*, Exhibits 528, 329.
[477] Swett Tr. at 11.
[478] *See e.g.*, Exhibit 521; *see also* Exhibit 522.
[479] *See e.g.*, Exhibit 520; *see also* Exhibit 524.
[480] *See e.g.*, Exhibit 518; *see also* Exhibit 520.

apartment 10U as a campaign office, Respondent did not renew his lease for apartment 10U, allowing the lease to expire on October 31, 2008.[481]

c. Special Handling List

Documents provided by the Olnick Organization indicate that it maintained a "special handling" tenant list that was disseminated to Olnick employees responsible for the day-to-day management and operation of the Lenox Terrace buildings.[482] The "special handling" list included fifteen Lenox Terrace tenants such as Respondent, Respondent's District Director, James Capel, and Respondent's Deputy District Director, Melvin Norris.[483] Other notable individuals on the Lenox Resident List included David Paterson and Hazel Dukes.[484] Special handling tenants received courtesies that other tenants did not receive including favorable treatment regarding non-payment of rent. In an email dated February 16, 2005, to Olnick Organization employees, Lenox Terrace general manager Rankin states, "[a]s per Neil, attached is a listing of Lenox Residents and their respective apartments that should be flagged immediately. Please ensure that no legal or collection actions are initiated against any of these apartments without notifying me first in advance."[485] This e-mail was designated "Confidential" and of "High" importance.[486] Neil Rubler was the Chief Operating Officer for the Olnick Organization when this email was sent.[487]

d. Respondent's Interactions with Olnick in his Official Capacity

Documents provided by the Olnick Organization indicate that in 2005, Olnick spoke with Respondent regarding the future development of Lenox Terrace.[488] Olnick conveyed information to and asked for responses from various people that Olnick representatives identified as "opinion leaders within the community who we wanted to have understand and support the development concept."[489] Olnick also hired Rubenstein Associates to contact various public officials in 2005 including Respondent.[490] Respondent testified before the Investigative Subcommittee that "[o]n one occasion, a person who I cannot identify represented himself to be a representative of the owner."[491] This anonymous 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.[492]

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[481] Swett Tr. at 59-61.
[482] Exhibit 513.
[483] *Id.*
[484] *Id.*
[485] *Id.*
[486] *Id.*
[487] Rubler Tr. (5/15/09) at 10.
[488] *Id.* at 53.
[489] *Id.*
[490] *Id.*
[491] Rangel. Tr. at 214.
[492] *Id.*

[O]ld tenants, if their view was blocked, they would be able to move."[493] According to Respondent, 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."[494]

Rubler confirmed that he met with Respondent in his congressional office to discuss a proposed redevelopment of the Lenox Terrace buildings.[495] Respondent was one of a variety of community leaders that Olnick representatives met with to gauge public opinion and build support for the proposal.[496] 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."[497] Although Rubler testified that he wanted Respondent to do "[n]othing in particular," he noted that Respondent was part of a "laundry list" of "influential ... people with whom we met, both to get their 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."[498] Rubler recalled meeting with Respondent, "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."[499] Rubler told the Investigative Subcommittee he thought Respondent "liked" their plan; Respondent "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."[500]

Respondent's staff had other official meetings with Olnick employees. Respondent's District Director, James Capel, not only lived in the Lenox Terrace complex, but in his official capacity, was also tasked with resolving some constituent issues related to primary residency.[501] Capel interacted with Lenox Terrace General Manager Darryl Rankin because tenants were discussing going on strike.[502] Capel indicated that Rankin was "aggressive" compared to his predecessor Harold Griffel regarding evictions and other policies.[503] Capel said "[a]s I reflect on it now" primary residency was the issue where management seemed to want to "take advantage of every situation they could take advantage of. And they looked over and they scrutinized the rent rolls and tried to see what they could do to generate more revenues."[504] Capel didn't speak with Rankin "on a regular basis" but recalled speaking to him regarding the potential strike.[505] Tenants wanted "to try to influence the action of the owner or the management if they thought

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[493] *Id.*
[494] *Id.* at 214-15.
[495] Rubler Tr. (7/14/09) at 5.
[496] *Id.* at 5-6.
[497] *Id.* at 6.
[498] *Id.*
[499] *Id.* at 6-7.
[500] *Id.* at 7-8.
[501] Capel. Tr. (7/30/09) at 50-51.
[502] *Id.*
[503] *Id.* at 64.
[504] *Id.* at 65.
[505] *Id.* at 50.

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."[506]

Argument

I. Conduct in Violation of the Solicitation and Gift Ban

a. Relevant Legal Standard

Congress enacted a government-wide ban on solicitation as part of the Ethics Reform Act of 1989, which, for the first time, limited the circumstances under which a government official could make solicitations.[507] Codified in Title 5 of the United States Code, section 7353 provides that no Member "shall solicit or accept anything of value from a person – (1) seeking official action from . . . the individual's employing entity; or (2) whose interests may be substantially affected by the performance or nonperformance of the individual's official duties."[508]

The statute prohibits solicitations of anything of value, regardless of whether the official personally benefits.[509] Impermissible solicitations include those made by another person in the name of a Member with the knowledge and acquiescence of that Member.[510]

Section 7353 has three components: (1) a solicitation or acceptance; (2) of anything of value; (3) from a person seeking official action from the House or whose interests may be substantially affected by the performance or nonperformance of the individual's official duties.

The term "solicitation" means "to ask."[511] The Federal Election Commission, in its regulations, defines "solicit" to mean:

> . . . [T]o ask, request, or recommend, explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value. A solicitation is an oral or written communication that, construed as reasonably understood in the context in which it is made, contains a clear message asking, requesting, or recommending that another person make a contribution, donation, transfer of funds, or otherwise provide

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[506] *Id.* at 51.

[507] Ethics Reform Act, Pub. L. No. 101-194, 103 Stat. 1716 (1989) (as amended).

[508] 5 U.S.C. § 7353.

[509] *See* Comm. on Standards of Official Conduct, *Revised Solicitation Guidelines* (Apr. 4, 1995), *reprinted in* H.R. Rep. No. 104-886, at 28-32 (1997) ("1995 Solicitation Pink Sheet"). A copy of the 1995 Solicitation Pink Sheet has been marked as Exhibit 193.

[510] *See* Comm. on Standards of Official Conduct, *Solicitation by Members, Officers and Employees in General,* and *Political Fundraising Activity in House Offices* (Apr. 25, 1997) ("1997 Solicitation Pink Sheet"). A copy of the 1997 Solicitation Pink Sheet has been marked as Exhibit 194.

[511] Merriam-Webster, http://www.merriam-webster.com/dictionary/solicit (last visited November 3, 2010).

> anything of value. A solicitation may be made directly or indirectly. [512]

To determine whether a solicitation has occurred, the question is simply whether someone asked, explicitly or implicitly. If a Member asks, then the first element of the solicitation ban has been met. That element is also met where someone asks in the name of a Member, with the knowledge and acquiescence of that Member. [513] Under the solicitation ban, it is impermissible simply to ask.

The term "anything of value" has been interpreted synonymously with "thing of value."[514] As noted by the courts, "the pervasive use of [thing of value] in criminal statutes of both the states and the federal government has made it a term of art, covering intangible as well as tangible things."[515] The following are examples of "things of value": amusement, promise of sexual intercourse, promise to reinstate an employee, agreement not to run in a primary election, testimony of a witness, and content of a writing.[516] The term "value" "embodies notions of worth, utility, and importance generally."[517] In several cases, courts have held that the test of value is whether the recipient subjectively attaches value to the thing received.[518]

Money is something "of value" but "anything of value" is not limited to things of "monetary, commercial, objective, actual or tangible value."[519]

The language "seeking official action from . . . the individuals' employing entity; or (2) whose interests may be substantially affected by the performance or nonperformance of the individual's official duties" is, by its terms, broad,[520] and the Committee on Standards of Official Conduct (Standards Committee) has consistently, in unpublished advisory opinions, interpreted the language broadly.

The Select Committee on Ethics interpreted language which, while more narrow than the language of § 7353, provides guidance on the scope of § 7353. The Select Committee was interpreting the language "direct interest in legislation before the Congress" from former House

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[512] 11 C.F.R. § 300.2(m).

[513] *See* 1997 Solicitation Pink Sheet ("A solicitation made by another person in the name of a Member, officer or employee, and with the knowledge and acquiescence of that official, will likely be deemed a solicitation by that official").

[514] *United States v. Singleton*,144 F.3d 1343, 1349 (10th Cir. 1998), *vacated on other grounds*, 165 F.3d 1297 (10th Cir. 1999) (collecting cases).

[515] *Id.*

[516] *See United States v. Girard*, 601 F.2d 69 (2d Cir. 1979) (internal citations omitted).

[517] *Singleton*, 144 F.3d at 1348-49.

[518] *Id.* at 1349 (collecting cases).

[519] *Id.*

[520] *See United States v. Sun-Diamond Growers*, 526 U.S. 398, 410 (1999) (characterizing § 7353 as broad).

Rule LXIII, clause 4, and found that the following individuals and organizations were deemed to have a direct interest in legislation before the Congress:

> (1) (a) Any person, organization or corporation registered under the Federal Regulation of Lobbying Act of 1946, or any successor statute; and any person who is an officer or director of a registered lobbyist, or a person who has been employed or retained by a registered lobbyist, or a person who has been employed or retained by a registered lobbyist for the purpose of influencing legislation before the Congress;
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> (b) Any person, organization, or corporation which employs or retains a registered lobbyist;
>
> (2) Any corporation, labor organization, or other organization which maintain a separate, segregated fund for political purposes (Political Action Committee as defined in the Federal Election Campaign Act of 1971 (2 U.S.C. 441b)); any subordinate or affiliated organization thereof; and the officers or directors of such organizations; and
>
> (3) Any other individual or organization which the Member, officer, or employee knows has a distinct or special interest in influencing or affecting the federal legislative process which sets such individual or organization apart from the general public.[521]

The Select Committee specifically rejected an interpretation of "before the Congress" that would require "an interest in a specific piece of legislation then pending before at least one subcommittee, or any other subdivision, of either House."[522] Instead, the Select Committee concluded that "the phrase . . . should be read broadly to include an ongoing special interest in affecting the legislative process."[523]

The Standards Committee was faced with the question of what constituted "direct interest in legislation before the Congress" in a number of matters under former House Rule XLIII. In one matter, the Standards Committee found that a Member violated the gift rule by accepting a flight from a Florida savings and loan institution, stating: "[i]t is clear that Florida Federal is an

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[521] House Select Comm. on Ethics, *Advisory Opinion No. 10* (*reprinted in* H. Rep. 95-1837), at 73.
[522] *Id.* at 75.
[523] *Id.* at 76.

entity with a 'direct interest in legislation' because it is federally regulated."[524] In another matter, the Standards Committee addressed whether an individual, Nelson Bunker Hunt, had a direct interest in legislation. The Committee found that Hunt's interest in matters before Congress was "open and notorious."[525] "Given his wide and varied interest in matters before the Congress and the direct impact which the actions of Congress have upon his business activities, Nelson Bunker Hunt obviously is a person with a direct interest in legislation within the definition and intent of that term."[526]

The language at issue in the Solicitation and Gift Ban is much broader than the language in former House Rule XLIII, clause 4. Any matter that would have constituted "direct interest in legislation before the Congress" will fall within the parameters of § 7353. But the § 7353 standards would also encompass many circumstances that the "direct interest in legislation" standard might not have reached.

A broad interpretation of the phrases "seeking official action from the House" and "interests may be substantially affected by" language comports with the underlying purpose of § 7353, as well as laws such as the Code of Ethics for Government Service, which cautions all government employees against "circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties."[527]

Given the breadth of the Solicitation and Gift Ban, the relevant inquiry is not what business or interest or official action was pending at a particular point in time. And it certainly is not which Members of Congress spoke to which employees or lobbyists representing a particular entity about an issue. The relevant inquiry is whether the person solicited had an interest in affecting the legislative process. In some instances, that will be reflected by lobbying on particular pieces of legislation. In other instances, there might be a request for a Member to intervene with a government agency. But it also includes recognizing the fact that most entities, including multi-national corporations and large foundations, will always have some interest in matters within the ambit of Congress. The performance or nonperformance of a Member's official duties can affect the interests of those entities, and that effect can be substantial.

b. Standards Committee Exceptions

Section 7353 provides for a supervising ethics office to provide for reasonable exceptions pursuant to the rules and regulations established by that office.[528] But under no circumstances

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[524] Comm. on Standards of Official Conduct, *Investigation of Financial Transactions Participated In and Gifts of Transportation Accepted by Representative Fernand J. St. Germain*, H. Rep. 100-46, 100th Cong., 1st Sess., at 42 (Apr. 9, 1987).

[525] Comm. on Standards of Official Conduct, *In the Matter of Representative George V. Hansen*, H. Rep. 98-891, Vol. 1, 98th Cong., 2d Sess., at 325 (July 19, 1984).

[526] *Id.*

[527] 72 Stat., Part 2, B12 (1958), H. Res. 175, 85th Cong. (adopted July 11, 1958).

[528] 5 U.S.C. § 7353(b).

can a gift be accepted in exchange for being influenced in the performance of any official act.[529] The Standards Committee, acting pursuant to 5 U.S.C. § 7353(b), has three basic "blanket exceptions," two of which are not applicable here -- campaign or political contributions and the Congressional Art Competition.[530]

The Standards Committee has also determined that certain solicitations for organizations qualified under § 170(c) of the Internal Revenue Code are permissible, but those solicitations are subject to a number of restrictions.[531] If a Member violates any one of these restrictions, his actions would not fall within the general exception and would run afoul of the solicitation ban.

The Standards Committee has stated that "the major restrictions on such solicitations are that no official resources may be used in making them, no official endorsement by the House of Representatives may be implied, and no direct personal benefit may result to the soliciting official."[532] Further, solicitations are not permitted for organizations established or controlled by Members unless the organization's principal activities are unrelated to the Member's official duties.[533] The Committee has also noted that, pursuant to a House rule, registered lobbyists may not be solicited, although it is permissible to solicit a company, association or other entity that employs registered lobbyists to lobby only for itself or its members, provided that the solicitation is directed to an officer or employee who is not a lobbyist.[534]

A Member is generally allowed to solicit funds for a § 170(c) organization in his own name without using the public fisc, his position or his influence.[535] When those restrictions are not followed, the general exception to the solicitation ban is inapplicable. If a Member uses official resources in the solicitation, the exception does not apply.[536] Or if a Member uses congressional letterhead, the exception does not apply.[537] Or if a Member may receive a direct benefit, the exception does not apply.[538] Or if a Member solicits on the property of the House of Representatives, the exception does not apply.[539] Or if a Member targets a federally-registered lobbyist, the exception does not apply.[540]

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[529] 5 U.S.C. § 7353(b)(2)(B).

[530] *See* 1997 Solicitation Pink Sheet.

[531] 1997 Solicitation Pink Sheet; 1995 Solicitation Pink Sheet; 1990 Solicitation Pink Sheet.

[532] 1997 Solicitation Pink Sheet.

[533] *Id.*

[534] *Id.*

[535] *Id.*

[536] 1997 Solicitation Pink Sheet; 1995 Solicitation Pink Sheet; House Comm. on Standards of Official Conduct, "Solicitation Under the Ethics Reform Act of 1989," (Oct. 9, 1990) (reprinted in Comm. on Standards, *House Ethics Manual*, 102d Cong., 2d Sess. 1992, at 64-65) ("1990 Solicitation Pink Sheet"). A copy of the 1990 Solicitation Pink Sheet has been marked as Exhibit 192.

[537] 1995 Solicitation Pink Sheet; 1990 Solicitation Pink Sheet; House Rule XXIII, cl. 11.

[538] 1990 Solicitation Pink Sheet.

[539] The House Office Building Commission's Rules and Regulations Governing the House Office Buildings, House Garages and the Capitol Power Plant (Feb. 1999).

c. Respondent made improper solicitations in violation of the Solicitation and Gift Ban.

Respondent solicited, both in writing and in personal meetings, contributions and other support for the Rangel Center. Most of the letters sent by Respondent clearly refer to funding and enclosed a brochure requesting $30 million. Recipients of the letter clearly interpreted them as a request for donations. For example, the Rhodebeck Trust gave a $25,000 donation based upon the information sent by Respondent. Several foundations wrote letters back to Respondent, and those letters indicate the recipients perceived the letter as a solicitation.

Other, more personalized, letters sent by Respondent requested meetings to discuss the Rangel Center. Respondent met with three prominent individuals, with two of those meetings resulting in contributions to the Rangel Center. Respondent attended other meetings where contributions were requested, and even personally asked for contributions in some instances.

These solicitations were for things "of value." Solicitations for money involve a tangible value. But so too does a solicitation for advice and other undefined "support" in fundraising efforts. Consultants charge real money to provide those types of services. Receiving them free of charge is a tangible benefit.

The solicitation for things "of value" were made to persons whose interests could be substantially affected by the performance or nonperformance of Respondent's official duties, particularly in his role as Ranking Member and the Chairman of the House Ways and Means Committee. In some instances, the entities solicited were seeking specific official action from the House.

As previously discussed, private foundations and public charities can be substantially affected by congressional action, particularly the Ways and Means Committee. Large corporations have an ongoing and substantial interest in numerous legislative issues. In some instances, Respondent solicited the private foundations that serve as the philanthropic arm of such corporations, and, in some instances, Respondent solicited corporate representatives directly.

Respondent could have solicited on behalf of CCNY, a § 170(c) organization, to raise funds to help disadvantaged students, or to help develop a graduate-level program in public administration, or to help with any number of laudable goals. But in order to do so, he was required to follow the rules established by the Standards Committee.

Respondent did not follow those rules. From the beginning, he used official resources to solicit. His staff communicated and interacted regularly with CCNY fundraisers, including reviewing and editing of the Rangel Center brochures and letters sent by Respondent. CCNY

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[540] House Rule XXV, cl. 5(e)(i); 1997 Solicitation Pink Sheet.

routinely requested assistance and information from Respondent's staff, and kept Respondent and his staff informed of the fundraising progress.

Respondent's staff drafted the solicitation letters sent by Respondent. This work was done on the property of the House of Representatives, using official House resources such as computers and printers. The letters were printed on congressional letterhead and sent using Respondent's frank.

The use of official resources, alone, would take Respondent's solicitations out of the § 170(c) exception to the Solicitation and Gift Ban. Respondent also used official letterhead, giving the impression of government sponsorship of the project. Further, Respondent targeted federally-registered lobbyists, making personal requests for contributions to the Rangel Center.

Respondent failed to follow the restrictions on solicitations. His conduct violated the Solicitation and Gift Ban.

II. Conduct in Violation of Clause 5 of the Code of Ethics For Government Service

a. Relevant Legal Standard

The House Rules and other standards governing Members' conduct prohibit a Member from using, or appearing to use, his official position for personal benefit.[541] Under the Code of Ethics for Government Service (Code of Ethics),[542] 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.[543]

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.[544]

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[541] House Rule XXIII, clauses 2 and 3; Code of Ethics for Government Service, clause 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.").

[542] 72 Stat., Part 2, B12, H. Res. 175, 85th Cong. (adopted July 11, 1958).

[543] Code of Ethics for Government Service, clause 5.

[544] Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. 100-56, 100th Cong. 2d Sess. 9 (Feb. 18, 1988).

The House has applied the prohibition on taking official action for personal benefit in situations where the potential personal benefit would accrue to an investment held by the Member.[545] For example, in the Standards Committee's report *In the Matter of a Complaint against Representative Robert L.F. Sikes*, the Standards Committee found that when Representative Sikes sought to purchase shares of a privately held bank "which he had been active in his official position in establishing" he 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[.]"[546]

The Standards Committee further 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," when he sponsored legislation to remove a reversionary interest and restrictions on land in which he had a personal financial interest.[547]

In another matter, the Standards Committee found that a Member violated this provision when he accepted gifts from an individual, on whose behalf he had intervened with business and government officials.[548] The Standards Committee report stated that:

> 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.[549]

Establishing a violation of clause 5 of the Code of Ethics for Government Service requires proving either:

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[545] 3 *Deschler's Precedents of the United States House of Representatives*, ch. 12 § 8.4, 1714 (1994).
[546] *Sikes*, at 3.
[547] *Id.* at 4.
[548] Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. 100-56, 100th Cong. 2d Sess. at 9 (Feb. 18, 1988).
[549] *Id.* at 9.

(a) The subject Member dispensed special favors or privileges to someone, whether for remuneration or not; or

(b) The subject Member:

1. accepted favors or benefits either for himself or his family; and
2. the circumstances of the acceptance could be construed by reasonable persons as influencing the performance of the subject Member's governmental duties.

b. Respondent's improper solicitations created the appearance of impropriety in violation of the Code of Ethics for Government Service.

Donations to the Rangel Center were a favor or benefit to Respondent. Those donations certainly benefitted others as well, namely students who received scholarships or benefitted from the Rangel Center programming. But the simple fact is that many people gave money because Respondent, a Member of Congress, asked.

At a meeting with Respondent and David Rockefeller, Butler's notes state, "Mr. Rockefeller said that in tribute to the Congressman, he would give him $100,000 to put toward any program he wished and that it would be unrestricted as he believes in that."

Respondent met with Hank Greenberg, head of the C.V. Starr Foundation, on June 4, 2007. According to Butler's notes, there was no discussion of the Rangel Center. Yet, within hours of the meeting, the Starr Foundation decided to write up a recommendation for a $5 million grant. Starr's Board of Directors approved the $5 million grant the following week.

Respondent also received benefits for himself. He received a place to house his papers, including an archivist to collect and organize those papers. The Center was named after Respondent. The documents indicate that Respondent would get an office in the building housing the Rangel Center. In addition to those tangible benefits, all of this contributes to Respondent's legacy, which appears to be of value to Respondent.[550] Respondent referred to the Rangel Center as "a personal dream of mine," demonstrating its importance to him.

The donations and resulting benefits were accepted under circumstances which might be construed by reasonable persons as influencing the performance of Respondent's governmental duties. As previously discussed, most (if not all) of the persons who donated to the Rangel Center had interests and business before the House. In his testimony, Dalley recognized, in retrospect, the complications that could arise from charitable solicitations by Respondent:

> [W]e now recognize that certainly one can be seen as soliciting from people who have a very specific interest in winning Mr.

[550] *See, e.g.*, Exhibits 104, 105, 402, 140; Dalley Tr. (12/9/08) at 53.

> Rangel's favor. I think that's the greatest danger. And we now recognize more than we did before that the Ways and Means Committee has a very broad jurisdiction. Everybody in the country seems to have an interest in taxes one way or another.[551]

A Member of the House, and in particular, the Chairman of the Ways and Means Committee has the ability to impact the interests of many persons. With that broad power comes the responsibility to avoid situations that create the appearance that his official duties have been improperly influenced. Someone in that position must take great care to ensure that his actions do not create such an appearance.

Respondent asked for support for the Rangel Center from persons who have asked or will ask for his support on legislation and oversight. Some of those persons gave money, to the tune of several million dollars. Those circumstances might be construed by reasonable persons as the acceptance of favors or benefits that influenced the performance of Respondent's official duties. As such, Respondent's conduct violated clause 5 of the Code of Ethics for Government Service.

III. Conduct in Violation of the House Gift Rule

a. Relevant Legal Standard

Under the House Gift Rule, a Member may not knowingly accept a gift, unless it falls within one of the exceptions set forth in the rule.[552]

Except as permitted by the House Gift Rule, as interpreted and enforced by the Standards Committee, a "Member ... may not knowingly accept a gift except as provided" in the House Gift Rule.[553]

The term "gift" is broadly defined, and includes "anything of value,"[554] as well as a "gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value."[555] As previously discussed, the term "anything of value" is not limited to things of "monetary, commercial, objective, actual or tangible value."[556] The use of the phrase "or other item having monetary value" in the House Gift Rule, therefore, does not restrict the definition of a "gift" to only items of monetary value.[557]

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[551] Dalley Tr. (12/9/08) at 53.

[552] House Rule XXV, cl. 5(a)(1)(A)(i).

[553] *Id.*

[554] 5 U.S.C. § 7353(a).

[555] House Rule XXV, cl. 5(a)(2).

[556] *Id.*

[557] Notably, House Rule XXV, cl. 5(a)(2)(A), includes things for which it would be difficult to place a monetary value, including favors and hospitality.

Further, even gifts that do not create any financial conflict of interest are problematic. It is human nature that the recipient of a gift will be grateful for gifts, and that the donor may expect favorable treatment or consideration in return.[558] Even where neither the donor nor the recipient has an intent to influence or be influenced, concerns may arise about the appearance of impropriety related to a gift or gifts. The House Bipartisan Task Force on Ethics (101st Congress) noted this concern:

> Regardless of any actual corruption or undue influence upon a Member or employee of Congress, the receipt of gifts or favors from private interests may affect public confidence in the integrity of the individual and in the institution of the Congress. Legitimate concerns of favoritism or abuse of public position may be raised by disclosure of frequent or expensive gifts from representatives of special interests, or valuable gifts from anyone other than a relative or personal friend.[559]

Under House Rule XXIII, clause 2, a Member must "adhere to the spirit as well as the letter" of the House Rules.[560] 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."[561] The practical effect of House Rule XXIII, clause 2, has been to provide a device for construing other provisions of the Code of Conduct and House Rules.[562] 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.[563] In other words, the House Rules should be read broadly, and a narrow technical reading of the House Rules should not overcome its "spirit" and the intent of the House in adopting the rules.[564]

Members are prohibited, either directly or indirectly, from accepting gifts, except as authorized by the Standards Committee. An indirect gift occurs where a "gift is given with the knowledge and acquiescence of the Member ... and the Member ... has reason to believe the gift was given because of the [Member's] official position."[565] Thus, a donation to a charitable

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[558] *See* Paul H. Douglas, Ethics in Government 48-49 (1952).

[559] Bipartisan Task Force Report.

[560] House Rule XXIII, cl. 2.

[561] 114 *Cong. Rec.* 8778 (April 3, 1968); *see also* 114 *Cong. Rec.* 8799 (statement of Representative Teague, member of the House Comm. on Standards of Official Conduct, 90th Cong.).

[562] 2008 *House Ethics Manual*, at 17.

[563] House Select Comm. on Ethics, *Advisory Opinion 4*, H. Rep. No. 95-1837, 95th Cong., 2d Sess. 61-62 (1979).

[564] *Id.*

[565] House Rule XXV, cl. 5(a)(2)(B)(i); 5 U.S.C. § 7353(a); *see also* 5 CFR §§ 2635.203(e) (stating "[a] gift is solicited or accepted because of the employee's official position if it is from a person other than an employee and would not have been solicited, offered, or given had the employee not held the status, authority or duties associated with his Federal position) and 2635.203(f) (stating "[a] gift which is solicited or accepted indirectly includes a gift: ... (2) Given to any other person, including any charitable organization, on the basis of designation,

organization, including a public college or university, may, under certain circumstances, be considered a gift attributable to a Member who solicited the donation.

As noted above, the Solicitation and Gift Ban prohibits Members from soliciting and / or accepting gifts unless authorized by the Standards Committee.[566] The Standards Committee, as the supervising ethics office under the Solicitation and Gift Ban statute, is authorized to provide for reasonable exceptions pursuant to the ban.[567]

As previously discussed, a Member is generally allowed to solicit funds for a § 170(c) organization in his own name without using the public fisc, his position or his influence.[568] When those restrictions are not followed, the general exception to the solicitation ban is inapplicable. Therefore, if a Member uses official resources in the solicitation, the exception does not apply and the Member has violated the statute.[569] Similarly, if a Member uses congressional letterhead, the exception does not apply and the Member has violated the statute.[570] Likewise, if a Member solicits on the property of the House of Representatives, the exception does not apply and the Member has violated the statute.[571] In addition, if a Member may receive a direct benefit, the exception does not apply and the Member has violated the statute.[572] Further, if a Member targets a federally-registered lobbyist, the exception does not apply and the Member has violated the statute.[573]

Approval by the Standards Committee of an exception to the solicitation ban also serves as approval of an exception to the statute's ban on the acceptance of any gift to the proposed beneficiary resulting from the solicitation that may be attributable to the soliciting Member.[574] Where a soliciting Member has complied fully with the Standards Committee's guidance with respect to a permissible solicitation, no gifts to the proposed beneficiary of the solicitation will be attributed to the soliciting Member.

However, where a Member fails to comply with the Standards Committee's guidance, the exception to the Solicitation and Gift ban has been violated, any solicitation is improper, and any

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recommendation, or other specification by the employee"); OGE Advisory Letter 92x22 (July 31, 1992) (citing the proposed indirect gift rule and noting under precedent existing before promulgation of regulations implementing 5 U.S.C. § 7353 that "a contribution to a charity made at the behest or suggestion of a Federal employee would be considered a gift under existing precedent even though the employee did not personally receive the contribution").

[566] 5 U.S.C. § 7353.

[567] 5 U.S.C. § 7353(b). Under no circumstances may a Member accept a gift in exchange for being influenced in the performance of any official act. 5 U.S.C. § 7353(b)(2)(B).

[568] *Id.*

[569] 1997 Solicitation Pink Sheet; 1995 Solicitation Pink Sheet; 1990 Solicitation Pink Sheet.

[570] 1995 Solicitation Pink Sheet; 1990 Solicitation Pink Sheet; House Rule XXIII, cl. 11.

[571] The House Office Building Commission's Rules and Regulations Governing the House Office Buildings, House Garages and the Capitol Power Plant (February 1999).

[572] 1990 Solicitation Pink Sheet.

[573] House Rule XXV, cl. 5(e)(i); 1997 Solicitation Pink Sheet.

[574] 5 U.S.C. § 7353(b)(1).

gift solicited by the Member to the charitable organization may be attributed as a gift to the Member, particularly where the Member has used official resources or the imprimatur of his office in making the solicitation.[575]

b. Respondent knowingly accepted gifts in violation of the House Gift Rule.

As previously discussed regarding Count I, Respondent failed to comply with the Standards Committee's restrictions regarding solicitations. Because of this failure, any gift solicited by Respondent on behalf of CCNY may be attributed as a gift to Respondent.

Almost all of the donations to the Rangel Center resulted from solicitations by Respondent. In some instances, those solicitations were explicit such as sending letters on official letterhead to the Ford Foundation, the Verizon Foundation, and the Rhodebeck Charitable Trust. In others, the requests were more implicit, with Respondent attending meetings with CCNY fundraisers and prospective donors such as Gene Isenberg, David Rockefeller, the Starr Foundation, and donors attending the Ford Foundation luncheon.

Respondent and his staff were well aware of the fundraising progress, including donations that had been made. CCNY would inform them when a grant was made. Some donors, such as Verizon and NYCT, informed Respondent directly of their grants. Respondent knew that gifts were resulting from his fundraising efforts.

Donations to the Rangel Center were indirect gifts, attributable to Respondent. None of the exceptions to the House Gift Rule apply. As such, Respondent's conduct violated the House Gift Rule.

IV. Conduct in Violation of the Postal Service Laws and Franking Commission Regulations

The term "frank" refers to the autographic or facsimile signature of person authorized by statute to transmit matter through the mail without prepayment of postage.[576] Members of

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[575] House Rule XXV, cl. 5(a)(2)(B)(i); 5 U.S.C. § 7353(a); *see also* 5 CFR §§ 2635.203(e) (stating "[a] gift is solicited or accepted because of the employee's official position if it is from a person other than an employee and would not have been solicited, offered, or given had the employee not held the status, authority or duties associated with his Federal position) and 2635.203(f) (stating "[a] gift which is solicited or accepted indirectly includes a gift: ... (2) Given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the employee"); OGE Advisory Letter 92x22 (July 31, 1992) (citing the proposed indirect gift rule and noting under precedent existing before promulgation of regulations implementing 5 U.S.C. § 7353 that "a contribution to a charity made at the behest or suggestion of a Federal employee would be considered a gift under existing precedent even though the employee did not personally receive the contribution").

[576] 39 U.S.C. § 3201.

Congress are authorized to use franked mail "in order to assist and expedite the conduct of official business, activities, and duties of the Congress of the United States."[577]

a. Relevant Legal Standard

The statutory provisions in Title 39 of the United States Code regarding the frank were enacted in 1973.[578] That bill also established a House Commission on Congressional Mailing Standards ("Franking Commission"). The Franking Commission is responsible for issuing regulations governing the proper use of the franking privilege, and the current version of those regulations was issued in 1998.[579]

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." The 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."[580]

The Franking Regulations provide specific examples of nonfrankable items, including "[n]o solicitations for funds for or on behalf of *any* organization or person."[581] The Franking Regulations further provide:

> "[n]o material that advertises, promotes, endorses or otherwise provides a benefit to an individual or organization not entitled to use the frank. This would include commercial, charitable, non-profit and political organizations as well as Congressional Member Organizations (CMO) and advisory boards or task forces."[582]

The Franking Regulations further reiterate, "[t]he solicitation of funds for or on behalf of a private organization, for example, for the purpose of supporting any charitable, education, religious or political program is not frankable."[583]

Misuse of the frank also constitutes a misdemeanor. The law provides that "whoever makes use of any official envelope, label, or indorsement [sic] authorized by law, to avoid the

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[577] 39 U.S.C. § 3210.

[578] Pub. L. No. 93-191.

[579] Comm'n on Cong. Mailing Standards, "Regulations on the Use of the Congressional Frank by Members of the House of Representatives (June 1998) ("Franking Regulations"). A copy of the Franking Regulations has been marked as Exhibit 195.

[580] Franking Regulations at 3.

[581] Franking Regulations at 7.

[582] Franking Regulations at 7-8.

[583] Franking Regulations at 12.

payment of postage or registry fee on his private letter, packet, package, or other matter in the mail, shall be fined under this title."[584]

The Standards Committee has previously cited a Member for misuse of the frank where the Member's office used the frank to send out letters promoting a cruise for senior citizens.[585]

b. Respondent permitted the use of his frank for unofficial business, in violation of the postal service laws and Franking Commission regulations.

The record evidences that Respondent used the frank to send out the initial solicitation package to foundations. The New York Stock Exchange Foundation retained copies of the envelope enclosing the solicitation letter and brochure, and that envelope bears Respondent's frank.

The evidence indicates that other mailings related to the Rangel Center were sent out under the frank. Dalley testified that he did not recall specifically using the franking privilege, but using the frank would have been consistent with the practice of the office.

The Franking Regulations are clear – the franking privilege may not be used for the benefit of charitable organizations.[586] Even if no solicitation is involved, the frank may not be used in support of such organizations.[587]

The Rangel Center mailings were not official business. They were not copies of the Congressional Record, or notice of town hall meetings, or photographs of missing children. They were not frankable material.[588] Because the franking privileged was used, neither Respondent nor CCNY had to pay for the postage on the mailings.[589]

Respondent's conduct violated 39 U.S.C. § 3215 and the Franking Regulations.

V. Conduct in Violation of the Franking Statute

a. Relevant Legal Standards

Section 1719 of title 18 provides:

> Whoever makes use of any official envelope, label, or indorsement [sic] authorized by law, to avoid the payment of postage or registry

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[584] 18 U.S.C. § 1719.

[585] Comm. on Standards of Official Conduct, *In the Matter of Representative Newt Gingrich*, H.Rep., 101st Cong. 2d Sess. (March 7, 1990) at Attachment D.

[586] Franking Regulations at 3.

[587] *Id.*

[588] The Franking Regulations set forth specific examples of frankable material. *See* Franking Regulations at 8-9.

[589] Member's Handbook at 36-41.

> fee on his private letter, packet, package, or other matter in the mail, shall be fined under this title.[590]

Section 1719 does not explicitly identify the mental state ("*mens rea*"), if any, that is necessary to find a violation of the statute. Determining the *mens rea*, if any, required for a federal crime requires statutory construction and an inference of the intent of Congress.[591] Section 1719 does not explicitly identify the level of *mens rea*, if any, that is necessary to find a violation of the statute.

Where a statute is silent on *mens rea*, it does not necessarily mean that Congress intended to dispense with such a requirement.[592] *Means rea* is required under common law, and that principle is generally followed even for statutory crimes that are silent on the issue.[593] The Supreme Court has noted that offenses that require no *mens rea* are generally disfavored.[594] The Court has suggested that some indication of congressional intent is required to dispense with *mens rea* as an element of a crime.[595] But the Court has also pointed to cases where no *mens rea* was required where the statue was silent and the punishment is relatively small:

> In determining whether a criminal statute dispenses with *mens rea*, "the nature and extent of the penalty attached to the offence may be reasonably considered. There is nothing that need shock any mind in the payment of a small pecuniary penalty by a person who has unwittingly done something detrimental to the public interest."[596]

Section 1719 requires only the payment of a fine. A violation of § 1719 is classified as an "infraction" under the federal criminal code, with a maximum fine of $5,000.[597] That level of punishment falls well within the parameters courts have established as "relatively small" punishment.[598] It is reasonable to conclude that the statue contains no *mens rea* requirement.

Further, under the precedent of the Standards Committee, there is no requirement of adhering strictly to general criminal law standards that require proof of the requisite intent to

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[590] 18 U.S.C. § 1719.

[591] *United States v. Balint*, 258 U.S. 250, 253 (1922).

[592] *Staples v. United States*, 511 U.S. 600, 605 (1994).

[593] *Id.*

[594] *Id.* at 606.

[595] *Id.* at 606.

[596] *Staples v. United States*, 511 U.S. 600, 617 n. 13 (1994)(*quoting Queen v. Tolson*, 23 Q.B. at 177 (Wills, J.)). *See also Staples*, 511 U.S. at 618 n. 15 *(citing Holdridge v. United States*, 282 F.2d 302, 310 (8th Cir. 1960)).

[597] 18 U.S.C. § 3571.

[598] *See, e.g., United States v. Unser*, 165 F.3d 755, 763-64 (10th Cir. 1999) (maximum penalty of $5,000 fine, or imprisonment for not more than six months, or both fell within "relatively small" standard); *United States v. Ayo-Gonzalez*, 536 F.2d 652, 661 (5th Cir. 1976) (maximum penalty of $100,000 fine, or imprisonment for not more than one year, or both not so great as to indicate Congress must have intended some *mens rea* requirement).

establish a violation in the non-criminal disciplinary context.[599] "Members are expected to adhere to standards of conduct far more demanding than the bare minimum standards established by our criminal laws."[600]

b. Respondent permitted use of his frank for unofficial business, in violation of the franking statute.

As previously discussed regarding Count IV, the record is clear that the frank was used for unofficial purposes. A violation of the criminal franking statute, which would merely constitute a infraction, does not require any finding of Respondent's intent regarding use of the frank. The misuse of Respondent's frank is a violation of the franking statute, 18 U.S.C. § 1719.

VI. Conduct in Violation of the House Office Building Commission Regulations

a. Relevant Legal Standard

The House Office Building Commission is comprised of the Speaker of the House and two representatives appointed by the Speaker.[601] The Commission issues regulations on the use and occupancy of rooms and space in the House office buildings.[602] Those regulations provide that the "soliciting of alms and contributions . . . in any of the areas covered by these regulations is prohibited."[603]

b. Respondent solicited on House property, in violation of the House Office Building Commission Regulations

The solicitation packages were prepared on and sent from property of the House of Representatives. The list of potential donors was prepared by fellows at the direction of Dalley. Dalley reviewed the list of potential donors, and drafted the initial solicitation letters. Dalley testified that he supervised three different people working on this project, in addition to work performed by Capel and Berger in New York. Respondent personally signed each of the letters.

Respondent knew that the work on the solicitation letters was occurring on House property. He directed the staff to do this work. By doing so, he violated the House Office Building Commission's Rules and Regulations.

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[599] *See* Comm. on Standards of Official Conduct, *Manual of Offenses and Procedures Korean Influence Investigation*, pursuant to H. Res. 252, 95th Cong., 1st Sess. (June 1977) at 35; Comm. on Standards of Official Conduct, *In the Matter of Representative Fortney "Pete" Stark*, H. Rep. 111-409, 111th Cong., 2d Sess. (January 29, 2010) at 10.

[600] *Id.*

[601] 2 U.S.C. § 2001.

[602] *Id.*

[603] The House Office Building Commission's Rules and Regulations Governing the House Office Buildings, House Garages and the Capitol Power Plant (February 1999) at ¶ 4.

VII. Conduct in Violation of Purpose Law and Members Handbook

a. Relevant Legal Standard

The proper use of government funds was a concern of the Founders, who provided in the Constitution that "No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law."[604] The Purpose Law provides that "[a]ppropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law."[605]

The use of appropriated funds by Members and committees of the House is governed by chapter 3 of title 2 of the United States Code. Section 57(a)(1) of that title provides that:

> the Committee on House [Administration] of the House of Representatives may, by order of the Committee, fix and adjust the amounts, terms, and conditions of, and other matters relating to, allowances of the House of Representatives within the following categories:
>
> (1) For Members of the House of Representatives, the Member's Representational Allowance, including all aspects of official mail within the jurisdiction of the Committee under section 59e of this title.
>
> (2) For committees . . . allowances for official mail . . . stationary, and telephone and telegraph and other communications.

The Committee on House Administration sets forth the regulations governing the use of the Member's Representational Allowance ("MRA") in the Member's Congressional Handbook ("Member's Handbook"). The Member's Handbook provides that "[o]nly expenses the primary purpose of which are official and representational and which are incurred in accordance with the Handbook are reimbursable."[606]

The Standards Committee has previously exercised jurisdiction over Members for their misuse of appropriated funds. In one matter, a Member was reprimanded by the House related to the use of official House resources by his former law office.[607] In another matter, violations of

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[604] U.S. Constitution, Article I, section 9 clause 7.

[605] 31 U.S.C. §1301.

[606] Member's Handbook at p. 6.

[607] Comm. on Standards of Official Conduct, *In the Matter of Representative Austin J. Murphy*, H. Rep. 100-485, 100th Cong., 1st Sess. (Dec. 16, 1987).

§ 1301 and related regulations were charged by an investigative subcommittee in a Statement of Alleged Violation where a Member used official resources for personal benefit.[608] In another matter, the Standards Committee publicly released a letter it sent to a Member for misuse of an office fax machine and official letterhead to send out a press release critical of a prospective campaign opponent.[609]

b. Respondent improperly used official House resources, in violation of the Purpose Law and Regulations of the Committee on House Administration as published in the Member's Handbook.

As previously discussed, the Franking Regulations make clear that solicitations, even for charitable organizations, are not official business. As such, no House resources may be used, even for otherwise-permissible solicitations.

Respondent regularly used official House resources to support fundraising efforts for the Rangel Center. Those resources included: staff time; House telephones, computers, printers, and fax machines; stationary and other office supplies; and franking expenses.

Respondent's conduct violated the Purpose Law (31 U.S.C. § 1301) and the Members' Congressional Handbook.

VIII. Conduct in Violation of Letterhead Rule

a. Relevant Legal Standard

The House has addressed the use of congressional stationary for unofficial purposes in House Rule XXIII. The Rule provides that a Member "may not authorize or otherwise allow an individual, group, or organization not under the direction and control of the House 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.[610]

The Standards Committee has interpreted that Rule as prohibiting the use by Members of the words "Congress of the United States," "House of Representatives" or "Official Business" on any solicitation.[611] The purpose of the rule is to avoid the appearance that the project is endorsed by the government.[612]

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[608] Comm. on Standards of Official Conduct, *In the Matter of Representative Barbara-Rose Collins*, H. Rep. 104-876, 104th Cong., 2d Sess. (Jan. 2, 1997) at 85-86.

[609] Comm. on Standards of Official Conduct, *Summary of Activities, One Hundred Fourth Congress*, H. Rep. 104-886, 104th Cong., 2d Sess. 22 (1997).

[610] House Rule XXIII, cl. 11.

[611] 1995 Solicitation Pink Sheet.

[612] *See, e.g.,* 1990 Solicitation Pink Sheet, 1995 Solicitation Pink Sheet; 1997 Solicitation Pink Sheet.

The Standards Committee has previously cited a Member for misuse of congressional letterhead where the Member's office used that letterhead to send out letters promoting a cruise for senior citizens.[613] In another matter, an investigative subcommittee charged a Member with improper solicitation for soliciting contributions to sponsor a gala reception.[614] The subcommittee found that the solicitation violated the rules on three grounds, including the fact that it was made on congressional letterhead.[615]

b. Respondent improperly used congressional letterhead, in violation of the Letterhead Rule

As previously discussed, Respondent wrote letters regarding the Rangel Center, including solicitations, using letterhead bearing the words "Congress of the United States" and "House of Representatives." Letterhead was used on numerous occasions throughout 2005, 2006, and 2007.

Respondent's use of congressional letterhead for communications related to the Rangel Center violated clause 11 of House Rule XXIII.

IX. Conduct in Violation of Ethics in Government Act and House Rule XXVI

Every year, every Member of Congress and thousands of other government employees are required to file Financial Disclosure statements pursuant to the Ethics in Government Act ("EIGA").[616] Respondent has admitted that he did not give his Financial Disclosure Statements the appropriate attention.[617] He signed off on Financial Disclosure statements that contained numerous mistakes and omissions.

a. Relevant Legal Standard

As the Bipartisan Task Force on Ethics noted, the principal objectives of financial disclosure are "to inform the public about the financial interests of government officials in order to deter potential conflicts of interest and to increase public confidence in the integrity of government officials."[618] Those objectives cannot be met unless government officials provide complete and accurate information. As the Standards Committee has previously stated, "the

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[613] *Gingrich* Report (1990) at Attachment D.
[614] *Collins* Report.
[615] *Id.* at 37.
[616] Title I, Ethics in Government Act of 1978 (5 U.S.C. app. 101-11).
[617] In his speech on the House floor on August 10, 2010, Respondent stated "Now when it comes to the negligence of the disclosures and the tax issues, there is absolutely no excuse that's there."
[618] Bipartisan Task Force Report.

timely filing of complete and accurate Financial Disclosure Statements is essential to the political process and is fundamental to the House ethics system."[619]

Title I of the EIGA sets forth the requirements for financial disclosure by government officials. The provisions of title I of the EIGA also constitute a Rule of the House.[620] Section 102 of the EIGA requires that each report "shall include a full and complete statement" with respect to several categories, including income, honoraria, income-producing assets, gifts, reimbursements for travel, interests in certain property, liabilities, transactions, and reportable positions.[621]

In a prior matter, a Member was reprimanded for omissions on his Financial Disclosure Statements.[622] The Member failed to report ownership of two stocks on his annual disclosure statement.[623] The Standards Committee noted that "[i]n neither instance does it appear that the failure to report was motivated by an effort to conceal the financial holding from the Members of the House or the public. But the Committee believes that the failure to report as required by Rule XLIV is deserving of a reprimand."[624]

In another matter, errors in a Member's Financial Disclosure Statements were brought to light in various media accounts following the Member's selection as a Vice Presidential running mate.[625] After a complaint was filed and an investigation initiated, the Member filed amendments to her Financial Disclosure Statements. The Committee found that most of the errors were technical violations, and did not take further action in light of the amendments.[626]

The Standards Committee subsequently issued guidance regarding the filing of amendments to Financial Disclosure Statements.[627] While the Committee recognized the need to amend Financial Disclosure Statements, it has adopted a policy of recognizing amendments to Financial Disclosure Statements only where there is a "need to clarify an earlier filing or to

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[619] Comm. on Standards of Official Conduct, *In the Matter of Representative Sam Graves*, H.R. 111-320, 111th Cong., 1st Sess. (Oct. 29, 2009), at 15.

[620] House Rule XXVI, par. 2.

[621] EIGA at § 102.

[622] 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).

[623] *Id.* at 5.

[624] *Id.* at 5.

[625] Comm. on Standards of Official Conduct, *In the Matter of Representative Geraldine A. Ferraro*, H. Rep. 98-1169, 98th Cong., 2d Sess. (Dec. 4, 1984).

[626] *Ferraro* Report at 29. The Committee also did not take action on the Member's failure to disclose her husband's financial interests because an exemption claimed by the Member did have some ambiguity, which was clarified through the Committee's report.

[627] "Policy Regarding Amendments to Financial Disclosure Statements" (Apr. 23, 1986), reprinted in the *2008 House Ethics Manual*.

disclose information not known (or inadvertently omitted) at the time the original Financial Disclosure Statement was submitted."[628]

The Committee has an established policy governing the acceptance of amendments:

> [T]he Committee [has] a two-pronged test for determining whether an amendment is considered to be filed with a presumption of good faith: First, whether it is submitted within the appropriate amendment period (close-of-year); and second, a "circumstance" test addressing why the amendment is justified. In this latter regard, filers will be expected to submit with the amendment a brief statement on why the earlier FD is being revised. Thus, amendments meeting the two-pronged test will be accorded a rebuttable presumption of good faith and [the] Committee will have the burden to overcome such a presumption. Conversely, any amendment not satisfying both of the above-stated criteria will not be accorded the rebuttable presumption of good faith. In such a case, the burden will be on the filer to establish such a presumption.[629]

Therefore, "so long as a filer wishes to amend within the appropriate period of prescribed 'timeliness' and such amendments are not submitted as a result of, or in connection with, action by [the] Committee that may have the effect of discrediting the quality of the initial filing(s), then such amendments will be deemed to be presumptively good faith revisions to the filings."[630] In addition, an amendment is not considered timely if the submission is clearly intended to "paper over" an earlier mis/non filing or there is not a showing that the amendment was occasioned by either the prior unavailability of information or an inadvertent omission.[631] 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.[632]

Following the issuance of that guidance, the Committee issued a letter of reproval to a Member for conduct including his failure to report liabilities to his campaign and liabilities to financial institutions.[633] That Member had borrowed funds from his campaign on eight occasions

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[628] *Id.* at 378.
[629] *Id.* at 379.
[630] *Id.*
[631] *Id.*
[632] *Id.*
[633] Comm. on Standards of Official Conduct, *In the Matter of Representative Charles G. Rose III*, H. Rep. 100-526, 100th Cong., 2d Sess. (Mar. 23, 1988).

between 1978 and 1985, none of which were reported on the Financial Disclosure Statements.[634] That Member also failed to report six liabilities to financial institutions.[635] There was no indication that the liabilities to the financial institutions were problematic; rather, the mere non-disclosure was the issue.[636] The Committee noted that the Member had filed amendments, but those amendments were not timely under the Committee's 1986 Pink Sheet, and did not prevent the Member from being sanctioned.[637]

b. Respondent failed to fully and accurately report numerous items on his financial disclosure forms, in violation of the Ethics in Government Act and House Rule XXVI.

It is undisputed that Respondent's Financial Disclosure Statements for the years 1998 through 2007 contain numerous errors and omissions. Respondent's filings did not "include a full and complete statement" as required by the EIGA. Accordingly, Respondent has violated § 102 of the EIGA and House Rule XXVI.

Respondent's violations of the EIGA are not the result of an isolated mistake. He made numerous errors and omissions over many years. And these mistakes were a substantial portion of his reportable items.

There is no dispute that Respondent signed the forms and is responsible for their contents. The Financial Disclosure Statements require the filer to certify that the Financial Disclosure is true, correct, and complete. The responsibility falls to the filer, not on others that might assist them. It is undisputed that Respondent's Financial Disclosure Statements were not a "full and complete statement" as required by the Ethics in Government Act.

X. Conduct in Violation of Code of Ethics for Government Service, Clause 5

a. Relevant Legal Standard

As previously discussed regarding Count II, the House Rules and other standards governing Members' conduct prohibit a Member from using, or appearing to use, his official position for personal benefit.[638]

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[634] *Rose* Report at 25.

[635] *Id.*.

[636] *See, e.g., Rose* Report at 20-22.

[637] *Rose* Report at 22.

[638] House Rule XXIII, clauses 2 and 3; Code of Ethics for Government Service, clause 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.").

b. Respondent's conduct related to the non-conforming use of a resident apartment for a campaign office created the appearance of impropriety in violation of the Code of Ethics for Government Service.

The evidence in the record makes clear that Respondent accepted a favor or benefit in the form of leasing a residential, rent-stabilized apartment for his campaign office in violation of the specific terms of his lease, New York City Zoning regulations, the New York City building code and the certificate of occupancy for Lenox Terrace. Respondent's acceptance of this favor from his landlord occurred "under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties" because Olnick owns several properties in Respondent's congressional district, is landlord to thousands of constituents in Respondent's congressional district and has met with Respondent and Respondent's staff regarding Olnick's interests as a property owner in the District and as landlord to Respondent's constituents.

Respondent accepted a favor or benefit from his landlord because he was allowed to use apartment 10U in the 40 West 135th Street building as his campaign office despite the explicit terms in his lease stating, "[y]ou shall use the Apartment for living purposes only." Respondent's landlord also allowed Respondent to use his apartment in violation of New York City Zoning regulations. As previously noted, Lenox Terrace is zoned in a C-1 commercial overlay district.[639] In a C-1 commercial overlay district, in any portion of a building occupied on one or more of its upper stories by residential uses, no non-residential uses shall be located above the first story ceiling.[640] The term "residential use" refers to "any use listed in Use Group 1 (single-family detached residences) or Use Group 2 (all other types of residential development).[641] By contrast, a commercial use includes "convenience retail or service establishments" and "offices, business, professional or governmental" operations.

At no time was the lease for apartment 10U modified to allow Respondent to use the unit for non-residential purposes. Respondent has never denied using apartment 10U exclusively as a campaign office; this fact was confirmed by his campaign's Executive Director, Walter Swett. Disbursement records for both Rangel for Congress and National Leadership PAC indicate that Respondent's campaign committee paid for the rent for apartment 10U throughout his tenancy in the unit. Likewise, Swett routinely sent out campaign emails listing the address for the campaign as apartment 10U.

Respondent's use of apartment 10U as a campaign office constituted a favor because he was granted a concession allowing his non-conforming use. The term "favor" means "a special privilege or right granted or conceded."[642] Under the lease terms for apartment 10U,[643] the New

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[639] Exhibit 532.
[640] Exhibit 533.
[641] New York City Department of City Planning Glossary available at http://www.nyc.gov/html/dcp/html/zone/glossary.shtml (last visited November 4, 2010).
[642] Merriam-Webster, http://www.merriam-webster.com/dictionary/favor (last visited Nov. 2, 2010).

York City building code[644] and the certificate of occupancy for Lenox Terrace,[645] apartment 10U should have been used as a personal residence. It was not. Respondent admits using apartment 10U for commercial purposes, exclusively as a campaign office.[646] By doing so, Respondent's conduct ran afoul of the New York City building code, New York City zoning regulations, the certificate of occupancy for the 40 West 135th Street building and the express terms of his lease. His use of apartment 10U was open and notorious; Respondent paid the rent for apartment 10U using campaign and PAC checks and made no attempts to conceal his non-conforming use. Respondent was repeatedly allowed to renew the lease for apartment 10U despite consistently violating the terms of the lease and operating his apartment in a manner that placed Olnick that violated New York City laws and regulations. Olnick's tolerance of Respondent's nonconforming use was, at a minimum, a favor to him, if not an outright benefit, given the unit's rent stabilized status.

Respondent accepted a favor from his landlord "under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties." While Respondent operated his campaign office in violation of the terms of his lease and contrary to zoning regulations, Respondent and his staff also met with Olnick management in their official capacities. Respondent's District Director, James Capel, met with Lenox Terrace's General Manager Darryl Rankin on behalf of constituents in Respondent's congressional district who were planning to strike arising out of Olnick's primary residency policy.[647] Capel indicated that Rankin and Olnick aggressively pursued evictions and other policies.[648] Although there is no evidence that Rankin or Capel actually discussed Respondent's use of apartment 10U during their communications, Capel noted that primary residency was the issue where management seemed to want to "take advantage of every situation they could take advantage of. And they looked over and they scrutinized the rent rolls and tried to see what they could do to generate more revenues."[649] This fact is particularly troubling given that at the same time that Capel met with Rankin, Respondent was using his residential apartment 10U as a campaign office. During this period, there is no evidence that Olnick took any steps to pursue evicting Respondent from apartment 10U.

In addition to intervening in tenant issues, Respondent also met with representatives from Olnick to discuss a redevelopment project they proposed in Harlem. Both Respondent and Rubler acknowledged that Olnick representatives met with Respondent and his staff to discuss a proposed redevelopment of the Lenox Terrace buildings. Rubler noted that Respondent "was one of a variety of community leaders that we met with to basically gauge opinion and build support

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[643] Exhibit 508.
[644] *See* NYC Code § 28-118.3.2; NYC Code § 28-118.3.2; NYC Code § 28-212.1.
[645] Exhibit 507.
[646] Rangel. Tr. at 187-189.
[647] Capel Tr. (7/30/09) at 50-51.
[648] *Id.* at 64.
[649] *Id.* at 65.

for the proposal."[650] Olnick met with Respondent in his congressional district to secure "support" and "acceptance" of the redevelopment from Respondent. Reasonable persons could conclude that the concession Respondent received from Olnick related to the use of apartment 10U influenced his interactions with Olnick in his official capacity. Respondent's District Director testified that he assisted constituents on issues related to primary residency at the same time Respondent failed to comply with the residency provision of his own lease. Furthermore, reasonable persons could conclude that being allowed to maintain a campaign office in his apartment building not in conformity with the terms of his lease and applicable New York City zoning regulations might make Respondent more likely to take a meeting with representatives from Olnick, or to provide support for their proposed redevelopment project. Reasonable persons could also conclude that arranging this type of meeting is exactly the reason why Olnick management sought to keep and maintain a list of prominent political figures that lived in their buildings and offered specific instructions regarding taking legal or collection actions against such tenants.

Clause 5 of the Code of Ethics for Government Service does not require that a Member is actually influenced by any favor he or she received, but only that reasonable persons could look at the circumstances and might construe them as influencing the Member's official conduct. There is no evidence that Respondent was aware he received any favor from Olnick or that Olnick used its favor to influence Respondent, but neither element is necessary to prove a violation of clause 5 of the Code of Ethics for Government Service. Members of Congress must adhere to the "highest" moral and ethical principles, including avoiding even an "appearance of impropriety."[651] Olnick owns substantial property interests in Manhattan and is landlord to thousands of Respondent's constituents in Harlem. Because of those facts, Respondent should have taken care to comply with the terms of his lease and relevant zoning regulations in order to avoid the appearance of impropriety he created by interacting with Olnick in his official capacity. His failure to do so violated clause 5 of the Code of Ethics for Government Service.

XI. Conduct in Violation of Code of Ethics for Government Service, Clause 2

a. Relevant Legal Standard

When a government employee evades any provision of federal law, that conduct also violates the Code of Ethics for Government Service[652] which provides that:

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

[650] Rubler Tr. (7/14/09) at 5-6.
[651] *See e.g.*, 2008 *House Ethics Manual* at 24, 71, 213 and 309.
[652] 72 Stat., Part 2, B12, H.Con. R. 175, 85th Cong. (1958).

> 2. Uphold the Constitution, laws, and legal regulations of the United States and all governments therein and never be a party to their evasion.

The term "evade" in this context means "to avoid the performance of: dodge, circumvent."[653] A Member that violates any federal or state laws or regulations may be found to have violated standards of conduct applicable to Members pursuant to the Code of Ethics for Government Service.

b. Respondent, by his conduct, evaded applicable laws and regulations, including his failure to report and pay taxes on income related to his villa at Punta Cana

As previously discussed, Respondent's conduct violated several laws and regulations, including the Solicitation and Gift Ban (5 U.S.C. § 7353), postal service laws (39 U.S.C. § 3215), the Franking Commission regulations, the criminal franking statute (18 U.S.C. § 1719), the Purpose Law (31 U.S.C. § 1301), Members Congressional Handbook, and the Ethics in Government Act.

Respondent also violated the tax laws by failing, for 17 years, to report, and pay tax on, rental income on a beach villa in Punta Cana, Dominican Republic.[654] Respondent has admitted that he should have reported the rental income on his taxes.[655]

Section 1 of Title 26 of the United States Code ("Internal Revenue Code") imposes a tax on the income of individuals. The Internal Revenue Code defines "gross income" to include "all income from whatever source derived. . . ."[656] The Supreme Court has repeatedly noted the "sweeping scope" of § 61 and its predecessors.[657] The Internal Revenue Code specifically identifies certain categories of items that constitute income including, *inter alia*, gross income derived from business, gains derived from dealings in property, rents, and income from discharge of indebtedness.

It is undisputed that Respondent's rental income from his investment at Punta Cana was taxable income. Respondent's failure to report the income he earned, and to pay the taxes owed on that income, violated the Internal Revenue Code.

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[653] Merriam-Webster, http://www.merriam-webster.com/dictionary/evade (last visited Nov. 2, 2010).

[654] *See* Exhibit 66; *See also* Table 2 – Punta Cana Rental Income.

[655] In a letter to Speaker Pelosi, Respondent wrote "the fact is that any reductions to the mortgage actually counted as income and should have been reported as such." Exhibit 540.

[656] 26 U.S.C. § 61.

[657] *Commissioner v. Schleier*, 515 U.S. 323, 327-28 (1995) and cases cited therein.

XII. Conduct in Violation of Code of Conduct: Letter and Spirit Of House Rules

a. Relevant Legal Standard

Members are obligated to follow not only the letter of the rules, but also the spirit of the rules.[658] A Member that violates a House Rule also violates the Code of Conduct.[659] The violation of the Code of Conduct occurs even where a House Rule is not technically violated, if the subject conduct violated the spirit of the Rule.

b. Respondent's conduct violated the letter and spirit of the House rules

Respondent's conduct violated clause 4 (Gift Rule) and clause 11 (Letterhead Rule) of House Rule XXIII and House Rule XVI. Because Respondent has violated these House Rules, he has also violated clause 2 for failure to adhere to the letter and the spirit of the rules.

XIII. Conduct Reflecting Discreditably on House

a. Relevant Legal Standard

Clause 1 of House Rule XXIII states that a Member "shall behave at all times in a manner that shall reflect creditably on the House." On numerous occasions, Members have been charged with violations of House Rule XXIII, clause 1.[660]

One of those matters involved a Member's failure to seek professional advice.[661] That matter involved the Member's use of a tax-exempt organization for purposes that potentially were not proper under the Internal Revenue Code.[662] The Committee did not make a determination regarding the actual propriety of the use of the organization, instead referring that issue to the Internal Revenue Service.[663] The Committee did find that, regardless of whether the use of the organization was permissible, the Member should have should have sought legal advice and his failure to do so did not reflect creditably on the House.[664]

In another matter, a Member was found to have violated clause 1 based upon a memorandum prepared by the Member, which contained misleading statements, and which he should have anticipated might be communicated to law enforcement officials, giving the

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[658] House Rule XXIII, cl. 2.
[659] *Id.*
[660] *See* Section V(C)(11), *supra.*
[661] Comm. on Standards of Official Conduct, *In the Matter of Representative Newt Gingrich*, H. Rep. 105-1, 105th Cong., 1st Sess. (January 17, 1997), at 58-63.
[662] *Gingrich* Report (1997) at 92.
[663] *Id.*
[664] *Id.*

appearance of an attempt to use political influence to affect the administration of an individual's probation.[665]

Another Member was found to have violated clause 1 for a pattern and practice of converting campaign funds for personal use.[666] The Committee did not address the intent of the Member. The Committee did note that clause 1 is "the most comprehensive provide of the Code of Official Conduct and 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.'"[667]

b. Respondent's conduct did not reflect creditably on the House

Respondent's actions and accumulation of actions reflected poorly on the institution of the House and, thereby, did not reflect creditably on the House, in violation of Clause 1 of the Code of Conduct.

WHEREFORE, Committee counsel respectfully requests that, for the above reasons, an Order be made herein granting each of the demands in the annexed Notice of Motion, and for such other relief as may be just and proper.

Dated: Washington, District of Columbia
November 8, 2010

R. Blake Chisam
Chief Counsel
Committee on Standards of Official Conduct
Room HT-2, The Capitol
Washington, D.C. 20515

[665] Comm. on Standards of Official Conduct, *In the Matter of Representative Barney Frank*, H. Rep. 101-610, 101st Cong., 2d Sess. (July 20, 1990).
[666] *In the Matter of Representative Earl F. Hilliard*, H. Rep. 107-130, 107th Cong., 1st Sess. (July 10, 2001).
[667] *Id.* (citing to the *House Ethics Manual* and *In the Matter of Representative Bud Shuster*, H. Rep. 106-979, 106th Cong., 2d Sess. (October 16, 2000) at 9).