

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

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In the Matter of)

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Representative Charles B. Rangel

STATEMENT OF CHARLES B. RANGEL IN RESPONSE
TO THE STATEMENT OF ALLEGED VIOLATION¹

For forty years, Congressman Rangel has faithfully served the people of New York’s Fifteenth District. He has at all times acted in his constituents’ best interests and has brought them economic and educational opportunities, as exemplified by his tireless support for the City College of New York (“CCNY”). Congressman Rangel donated his official papers to CCNY, secured appropriations to support the College’s academic program in public service, and promoted the program to education-minded philanthropists. The benefit Congressman Rangel received from this work was the satisfaction of fulfilling his obligations to his constituents. He did not profit economically, nor did he ever link his work for CCNY with matters before the Ways & Means Committee. The Statement of Alleged Violation (“SAV”) in this case is deeply flawed in its factual premises and legal theories, not only with regard to CCNY, but also as to the other claims. The undisputed evidence in the record— assembled by the Investigative Subcommittee over its nearly two-year investigation—is that Congressman Rangel did not dispense any political favors, that he did not intentionally violate any law, rule or regulation, and that he did not misuse his public office for private gain.

¹ This Response has been prepared by counsel and is submitted pursuant to Standards Committee Rule 7(f).

I. CCNY: CONGRESSMAN RANGEL’S ACTIVITIES ON BEHALF OF CCNY’S RANGEL CENTER DID NOT VIOLATE HOUSE RULES.²

Congressman Rangel helped a public college in his Congressional district to establish and fund an academic program in public service for disadvantaged students. To support that effort, he agreed to donate his official papers, allowed the school to name the program in his honor and introduced college officials to potential donors. Congressman Rangel is hardly the only member of the Congressional leadership to engage in such activity. Senate Minority Leader McConnell, for example, has donated his official papers, lent his name and raised millions of dollars from corporate donors to launch the McConnell Center for Political Leadership at the University of Louisville; former House Judiciary Committee Chairman Peter Rodino donated his papers to Seton Hall Law School, where they are housed in the Peter W. Rodino, Jr. archives, a division of the Peter W. Rodino Law Library.³ Without pausing to consider, Congressman Rangel treated this effort as constituent service, in pursuit of not one, but two, important national priorities—providing educational opportunities for disadvantaged and minority students and promoting diversity in our nation’s public service.

The charges in the SAV magnify an issue about the proper scope of Congressman Rangel’s official duties into an attack on his integrity. The Congressman did not abuse his official position or enrich himself financially. He did not target for solicitation foundations, corporations or individuals with business before the Ways & Means Committee, nor did he offer or provide preferential treatment or favors to potential contributors. He received no prohibited benefit, direct or indirect, from his work on behalf of this program that violates the ethics rules.

² Congressman Rangel responds herein to paragraphs 1-10 and 23-92 of the SAV. Paragraphs 11-22 are omitted from this section and addressed in a separate section, as they pertain to Congressman Rangel’s service as a trustee of the Ann S. Kheel Charitable Trust and not to the Rangel Center.

³ Senators Byrd, Lott and Helms are among the many Members of Congress to have established similar programs.

In retrospect he recognizes that the public would have been better served if he had consulted the Standards Committee staff in advance regarding his desire to help CCNY. If he mistakenly used the wrong letterhead or other modest resources in this worthy cause, the error was made in good faith.⁴

A. Congressman Rangel Has Consistently Supported Educational Programs like the Rangel Center as Part of His Official Responsibilities.

CCNY, located in the heart of Congressman Rangel's Congressional district, has a distinguished history of opening higher education to disadvantaged, minority and immigrant students. Congressman Rangel grew up four blocks from CCNY, is a lifelong resident of its Harlem neighborhood and has represented its Congressional district for forty years. As a high school dropout who completed his education through the G.I. Bill after the Korean War, the Congressman benefited from and enthusiastically advocates for educational opportunities for underserved students, particularly those designed to increase minority participation in public service.⁵

The idea for the Rangel Center originated with CCNY President Gregory Williams, following years of discussion with Congressman Rangel about "ways we could get more people of color involved in government service." Williams Tr. at 8-11 (CSOC.CBR.00017725-28). President Williams envisioned a Center for Public Service that would offer new undergraduate and master's degree programs, and would also house a conference center, library, and additional

⁴ Members traditionally exercise broad discretion to determine what activities lie within the scope of their official duties. *See* 123 Cong. Rec. 5900 (daily ed. Mar. 2, 1977) (statement of Rep. Hamilton) ("There are essentially no rules and regulations" that define what is appropriately an official expense. "It is left up to the Members."). The Standards Committee does not second-guess the reasonable judgments of a Member, made in good faith, that particular communications lie within his role as the people's representative. Statement of the Committee on Standards of Official Conduct Regarding Complaints Against Rep. Newt Gingrich, at 63 (Comm. Print Mar. 8, 1990) (The Ethics Committee "is particularly sensitive when its actions might be viewed as limiting a Member's ability to speak publicly on issues").

⁵ Long before CCNY founded the Rangel Center, the Congressman sponsored a two-year fellowship program operated jointly by Howard University and the U.S. State Department to promote the entrance of minorities in the Foreign Service. *See* http://www.howard.edu/rjb/rangelprogram_old.htm (last visited July 20, 2010).

programs to provide the training necessary to prepare young men and women for public service careers. *See* CSOC.CBR.00000291-317 (proposal to establish the Rangel Center). By naming the Center after Congressman Rangel and housing his official papers in its fledgling public service archive, CCNY hoped to enhance its ability to attract the necessary private and public funds to hire first-rate faculty and provide financial aid for needy students. *See* CSOC.CBR.00000311-14 (outlining initial budget elements). CCNY also planned to restore a vacant brownstone to be the Center's future home.

Congressman Rangel promoted the Rangel Center not only because of his longstanding personal commitment to creating opportunities for minority and economically disadvantaged students, but because diversifying the public service was an important official responsibility. He was simultaneously assisting a substantial institutional constituent, CCNY, which brings jobs to his district and has for generations made education available to people of limited means from Harlem and the surrounding area.

B. Congressman Rangel Did Not Target Persons with Business Before the Ways & Means Committee, nor Did He Offer or Extend Favorable Consideration in Official Matters to any Donor.

Section 7353 of Title 5 of the United States Code and related House ethics rules prohibit Members asking for anything of value from persons who seek official action from the House or have interests likely to be substantially affected by the performance of official duties. Subject to certain limitations, Members may, and many do, raise funds for tax-exempt non-profit educational and charitable organizations, so long as they do not receive a personal benefit or suggest that the donor will receive "favorable consideration in official matters." Ethics Manual at 348-49 ("As a general matter the Committee permits (without the need to seek prior Committee approval) Members . . . to solicit on behalf of [non-profit] organizations . . ."). These rules are intended to prevent Members from targeting solicitations to individuals or entities that

may feel obliged to make donations in order to protect their legislative interests or that may use charitable giving to influence a Member's official action.

Congressman Rangel's efforts on behalf of CCNY never targeted donors based on their legislative interests. Dalley Tr., Vol I., at 54 (CSOC.CBR. 00017590) (no effort to target people with Ways & Means business); *see also* Butler Tr., Vol. II, at 25 (CSOC.CBR.00027269) (testimony from CCNY's Vice President for Development and Institutional Advancement, who spearheaded fundraising for the Rangel Center, that neither the Congressman nor his staff ever discussed seeking donations from individuals or entities that might have business before the Ways & Means Committee). Instead, he wrote letters or reached out personally to foundations and business leaders with a demonstrated interest in educational philanthropy. At the direction of the Congressman's chief of staff, an unpaid fellow compiled from a Council on Foundations directory a mailing list of granting organizations with interests in education, public service or minority education.⁶ *See* Dalley Tr., Vol. I, at 44 (CSOC.CBR.00017580). Prior to sending the letters, the Congressman reviewed the list of potential addressees and believed—based on his familiarity with the range of matters before the Ways & Means Committee—that none of the recipients were seeking official action or were likely to be substantially affected by the performance of his official duties. Rangel Tr. at 33-34 (CSOC.CBR.00027449-50).⁷

It was not Congressman Rangel, but Robert Morgenthau, the longtime District Attorney of New York and also a strong supporter of CCNY, who contacted his good friend Eugene

⁶ The recipients included individuals with demonstrated commitments to education, without regard to their legislative interests, such as Ivan Seidenberg, Chairman and CEO of Verizon. From a working class family in New York, after high school, Mr. Seidenberg worked as a telephone lineman. Following military service in Vietnam, he returned to school and earned his degree from CCNY's parent, the City University of New York. He went on to attend business school at Pace University, to which he donated \$15 million. Mr. Seidenberg's rise from lineman to CEO and CUNY education made him a clear choice to receive a CCNY letter.

⁷ Vague allegations that potential contributors lobbied unspecified "members of the House" during an undefined "relevant period" about a laundry list of issues (SAV ¶¶ 89-92) indicate nothing about what Congressman Rangel knew at the time that he reviewed the mailing list.

Isenberg, CEO of Nabors Industries, about the Rangel Center. Mr. Morgenthau invited Congressman Rangel and CCNY's leadership to meet with Mr. Isenberg because he believed Mr. Isenberg's past generosity to educational institutions made him a natural supporter for the Rangel Center. Morgenthau Tr. at 9 (CSOC.CBR.00027842) ("[S]ince I had helped Isenberg in two of his prior educational ventures . . . I thought [the Rangel Center] was something that would interest him."); *see also id.* at 14 (CSOC.CBR.00027847) ("Mr. Isenberg is very interested in the education of minorities."). At the meeting arranged by Mr. Morgenthau, the participants discussed their shared interest in enabling underprivileged students to become leaders in public life. Morgenthau Tr. at 13 (CSOC.CBR.00027846); Isenberg Tr. at 11 (CSOC. CBR.00017332). There was no discussion at the meeting of any legislative matter affecting Mr. Isenberg or his company. Morgenthau Tr. at 15 (CSOC.CBR.00027848); Isenberg Tr. at 11 (CSOC.CBR.00017332); Rangel Tr. at 48 (CSOC.CBR.00027464); Butler Tr., Vol. II, at 36 (CSOC.CBR.00027280). Importantly, Congressman Rangel did not take part in the subsequent discussions between CCNY and Mr. Isenberg that resulted in a substantial gift to the Center. Butler Tr., Vol. II, at 59 (CSOC.CBR.00027303); Isenberg Tr. at 11-12 (CSOC.CBR.00017332-33).

The uncontroverted evidence is that Congressman Rangel never suggested that any donor to the Rangel Center would receive favorable consideration in legislative matters and never gave preferential treatment to any contributor. Every witness who was asked confirmed this for the Subcommittee:

- John L. Buckley, Majority Chief Tax Counsel of the Ways & Means Committee testified that Congressman Rangel kept the Rangel Center separate from his work with the Ways & Means Committee. Indeed, Mr. Buckley testified that he did not learn about the Rangel Center until a New York Times reporter called him about it. Buckley Tr. at 46 (CSOC.CBR.00018233). He also testified that Nabors Industries did not receive any special treatment from Congressman Rangel. *Id.* at

53-54 (CSOC.CBR.00018240-41).

- Janice Mays, Chief Counsel & Staff Director of the Ways & Means Committee testified that she knew of no special treatment of anyone in connection with the Committee's work, and that Congressman Rangel generally keeps his work with the Committee separate from his work with his district and constituents. Mays Tr. 13 (CSOC.CBR.00017944). She also testified that there was no connection between any Ways & Means legislation and any donation by AIG to the Rangel Center. *Id.* at 13, 53 (CSOC.CBR.00017944, CSOC.CBR.00017984).
- Mr. Isenberg testified that he never sought nor received any special consideration from Congressman Rangel because of his donation to CCNY. Isenberg Tr. at 13 (CSOC.CBR.00017334); *see also* Kies Tr. at 22 (CSOC.CBR.00018390) (same). They did not discuss legislative matters in the September 2006 meeting arranged by Mr. Morgenthau about the Center, and did not discuss the Center in their brief communications about potential legislation in February and June 2007. Isenberg Tr. at 30-31 (CSOC.CBR.00017351-52); Kies Tr. at 17-18, 24-25 (CSOC.CBR.00018385-86, CSOC.CBR.00018392-93); *see also* Morgenthau Tr. at 15 (CSOC.CBR. 00027848).
- Susan Berresford, former President of the Ford Foundation, testified that in meetings with Congressman Rangel regarding the Rangel Center there was no discussion of legislative or policy issues. Berresford Tr. at 16 (CSOC.CBR. 00019131).
- Rachelle Butler and Gregory Williams of CCNY testified that Congressman Rangel did not discuss any Congressional action or Ways & Means Committee business at any of the meetings they attended with potential donors concerning the Rangel Center, including the meeting with Eugene Isenberg. Butler Tr., Vol. II, at 27, 35-36, 61 (CSOC.CBR.00027271, CSOC.CBR.00027279-80, CSOC.CBR.00027305); Williams Tr. at 18, 22 (CSOC.CBR.00017735, CSOC.CBR.00017739).

Although the SAV says much about the jurisdiction of Congressman Rangel's Committees and identifies certain issues before them, it fails to cite a single instance in which the Congressman catered to the interests of an actual or potential donor to the Center or failed to act solely on the merits of a matter before him. Thus, it is clear that Mr. Isenberg's contribution to the Rangel Center did *not* affect the Congressman's action on a tax inversion provision in minimum wage legislation in 2007. In his testimony, John Buckley, Chief Tax Counsel to the Ways & Means Committee, confirmed that the inversion provision never came before

Congressman Rangel or the Ways & Means Committee. On February 1, 2007, nearly two weeks before Mr. Isenberg and his company's lobbyist first contacted Congressman Rangel concerning possible tax legislation, the Committee staff had already drafted a bill that made the subject irrelevant, and that bill had been introduced on February 9, three days before Congressman Rangel learned of Nabors Industries' interest in tax inversion.⁸ Ex. 1, Letter from John Buckley, Chief Tax Counsel, House Committee on Ways and Means, to Editors and Reporters, publicly released on Dec. 5, 2008 ("Buckley Ltr."); Buckley Tr. at 23-25 (CSOC.CBR. 00018210-12) (stating that the issue of tax inversion was never presented to Congressman Rangel); Mays Tr. at 25 (CSOC.CBR.00017956) ("Inversions were not discussed in our markup and weren't really discussed by the Members at all."). In fact, Congressman Rangel never gave Mr. Buckley any instructions regarding the inversion issue. Buckley Ltr. at 3; Buckley Tr. at 24-25 (CSOC.CBR.00018211-12) (Congressman Rangel's direction to Mr. Buckley was to work out a non-controversial bipartisan bill). In this and other matters, the record clearly establishes that Congressman Rangel kept his Ways & Means Committee business separate from his work on behalf of the Rangel Center.

C. Congressman Rangel Did Not Benefit Improperly from His Support for the Rangel Center.

The SAV's charge that Congressman Rangel received a gift or otherwise benefited improperly from money donated to CCNY or from the donation of his own official papers to

⁸ The minimum wage bill passed by the Senate would have retroactively increased taxes for companies that had incorporated offshore in 2002 and 2003, but maintained the majority of their operations in the United States, a process known as "inversion." The inversion provision was one of many revenue offsets included in the Senate bill to pay for corporate tax cuts. Because the House bill did not contain the corporate tax cuts favored by the Senate, it did not require such revenue offsets. Instead, at the direction of then-Chairman Rangel and Ranking Member McCrery, the Ways & Means staff had prepared a bipartisan, non-controversial bill, which had been introduced three days before Mr. Isenberg mentioned the matter to Congressman Rangel. SAV ¶ 157. The House bill contained nothing about inversion. H.R. 976, 110th Cong. (2007). The Senate Finance Committee staff decided not to raise the issue when the bill went to conference. As a result, the inversion tax provision never came before the House when the final bill was enacted into law on May 25, 2007 as Pub. L. No. 110-28.

CCNY is not supported by the law.

Count III relies on House ethics rules and 5 U.S.C. § 7353, which prohibit a Member from receiving a gift, defined as a “gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value.” Count II is based on Clause 5 of the Code of Ethics for Government Service (“CEGS”), which provides that a public official should “never accept for himself or his family, favors or benefits that might be construed as influencing the performance of governmental duties.” As a matter of law, however, charitable contributions made to CCNY in connection with the Rangel Center cannot be construed as an improper favor or benefit to Congressman Rangel.

It is undisputed that every single charitable contribution in this case went to CCNY, a public educational institution, and *not* to the Congressman. The SAV charges that he benefited indirectly from contributions to CCNY for the Rangel Center because the Center preserved his legacy by naming the Center in his honor, providing an office for him, and storing and archiving his official papers. But these were not favors to Congressman Rangel; they were integral parts of the Center’s academic program, and CCNY, not Congressman Rangel, was the beneficiary.

It was plainly permissible under House ethics rules for Congressman Rangel to allow CCNY to name the Center for him. The House Ethics Manual expressly encourages Members “to lend their names to legitimate charitable enterprises and otherwise promote charitable goals.” Ethics Manual at 44 (internal quotations omitted); *see also* Ethics Manual at 347 (“Clause 11 of House Rule XXIII is not intended to restrict a Member’s . . . ability to lend one’s name in support of a private group.”). These rules reflect a recognition that the naming is not for the benefit of the Member, but, as here, for the benefit of the organization.

To the extent that the naming of the Center can be viewed as an indirect reputational

benefit to the Congressman, it is a benefit authorized by the House ethics rules. The Standards Committee's parameters for solicitations on behalf of charitable organizations recognize that indirect benefits may properly accrue to Members. Indeed, the prohibition extends only to direct benefits: "No *direct* personal benefits may result [from charitable solicitations] to the soliciting official." Ethics Manual at 348 (emphasis added). A Member is, however, expressly permitted to accept non-monetary forms of recognition of his public service, even though the honor has the incidental effect of enhancing his reputation. Ethics Manual at 66, 76.⁹ Whatever personal interest the Congressman may have in the "perpetuation of his legacy" (SAV ¶¶ 1, 189), contributions to a Center named in his honor do not violate CEGS or the gift rule.

The availability of an office at the Center similarly cannot as a matter of law be construed as a gift or favor to Congressman Rangel. First, its intended purpose was for the benefit of the students, to provide a place where they could meet with him as part of their academic program. Williams Tr. at 23 (CSOC.CBR.00017740). The undisputed testimony is that the Congressman did not seek such an office; it was proposed by CCNY. Butler Tr., Vol. II, at 28 (CSOC.CBR.00027272). Second, the undisputed testimony is that no office was actually set aside for his use and he will not receive it in the future because the idea was abandoned early on for space and funding reasons. *Id.*

The claim that the Congressman will benefit impermissibly from the archiving of his

⁹ Ethics Committee precedent establishes that for something to be a gift under House ethics rules or a "favor or benefit" under the CEGS, it must have some pecuniary benefit to the Member or his family. *See* H. Rep. 104-866 (Jan. 2, 1997), § IV.A.3. (free broadcasting of lectures in Rep. Gingrich's college course "did not constitute either a gift or a favor to Representative Gingrich within the meaning of House rules or applicable standards" because the benefit to Rep. Gingrich consisted only of publicity). Further, the Investigative Subcommittee's theory contradicts the plain meaning of the statute and the House gift rule. The use of the word "other" in the phrase "gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or *other* item having monetary value," plainly signifies that the preceding terms are examples of items having monetary value. It is a basic rule of statutory interpretation that the phrase "A, B, or any other C" means that "A is a subset of C." *United States v. Williams-Davis*, 90 F.3d 490, 509 (D.C. Cir. 1996); *see also Dong v. Smithsonian Inst.*, 125 F.3d 877, 880 (D.C. Cir. 1997); *United States v. Delgado*, 4 F.3d 780, 786 (9th Cir. 1993).

official papers rests on the flawed premise that CCNY is providing a service to him. But the evidence is that Congressman Rangel agreed to *donate* the papers to CCNY, a routine practice by Members of Congress.¹⁰ The Rangel papers are valuable property, which CCNY will archive not as a favor to Congressman Rangel but in order to preserve and maximize its value to the College. The Congressman will relinquish both the papers themselves and control over them.¹¹

Other Members of Congress have donated their papers and raised funds for institutions bearing their names under virtually identical circumstances:

- Senator Mitch McConnell raised funds from corporate donors—including Humana Foundation, Ashland Inc., RJR Nabisco, Toyota and military contractor United Defense Industries—to launch the McConnell Center for Political Leadership at the University of Louisville, together with the McConnell-Chao Archives, which employs an archivist paid more than the budget for CCNY’s archivist. Senator McConnell also secured an earmark for the building in which his archive is located. *See* University of Louisville video thanking Senator McConnell for his support for the University, available on YouTube at <http://www.youtube.com/watch?v=koqh1unTqf8> (last visited on July 20, 2010); *see also* www.youtube.com/watch?v=RzYii5tBe7Y (dedication of McConnell-Chao archives) (last visited on July 20, 2010).
- Senator Robert Byrd donated his papers to the Byrd Center for Legislative Studies at Shepard University in Sheperdstown, West Virginia. The Center includes archival research facilities, offices and classrooms. *See* www.byrdcenter.org (last visited on July 20, 2010).
- Senators Trent Lott and Jesse Helms established centers at universities during their respective tenure in Congress and participated in fundraising for them. Senator Lott appeared onstage at a Kennedy Center fundraiser that raised \$10

¹⁰ The Manuscript Division of the Library of Congress stores and archives the papers of innumerable federal officials bound by CEGS and the gift rule, including nine hundred Members of Congress. http://www.loc.gov/rr/mss/mss_abt.html (last visited on July 19, 2010). We are unaware of any suggestion that the curation of the historically important documents donated by these officials should be treated as a personal benefit to the individual, rather than a service provided by the Library of Congress to the public. A comprehensive list of hundreds of congressional archives maintained at academic and other research institutions can be found at <http://www.archives.gov/legislative/repository-collections/name.html> (last visited on July 20, 2010).

¹¹ Moreover, the archivist will be a Rangel post-doctoral fellow—a student pursuing an advanced degree, not a professional librarian. *See* CSOC.CBR.00000300. The archivist will “provide assistance to the other scholars, CCNY students, and the Harlem community, while pursuing his/her own research in the papers.” CSOC.CBR.00000300. Thus, the position provides much needed financial support for a post-doctoral student with an academic interest in the subject matter, as well as broader educational benefits to the scholarly community.

million from corporate donors for one of the centers named for him. The center named for Senator Helms had a working office that was designated for his use after retirement, in addition to a replica of his office in the Dirksen Building.

We provide these examples, not as part of an “everyone does it” defense, but rather to demonstrate that these activities have never been regarded as creating an improper benefit to a Member.

The House conclusively determined in 2007 that funds for the Rangel Center did not provide an improper financial benefit to Congressman Rangel when it approved an appropriation for the Center. That decision forecloses these ethics charges. In an unsuccessful effort to eliminate a \$1.9 million earmark for the Rangel Center, Congressman John Campbell of California read from a brochure describing the role of the archivist/librarian to “organize, index and preserve for posterity all documents, photographs and memorabilia relating to Congressman Rangel’s career,” and the office that CCNY contemplated providing. *See* 153 Cong. Rec. H8133 (daily ed. July 19, 2007). Speaking in support of the appropriation, Congressman Rangel described the Center’s public purpose and his role in it, including his participation in fundraising. After floor debate on the issue, 316 Members voted in favor of the earmark. 153 Cong. Rec. H8133-35 (debate); H8163-64 (recorded vote) (daily ed. July 19, 2007). The overwhelming majority of Members thus concluded correctly that neither the archivist nor the office improperly benefited the Congressman or gave him an interest in financial support for the Center; such an interest would have rendered the earmark improper and required the Members to vote against it. House Rule XXIII, clause 17; Ethics Manual at 185, 239 (earmark prohibited if Member or spouse has a pecuniary interest, but is permitted notwithstanding “remote, inconsequential, or

speculative interests”).¹²

And if, as the House plainly concluded in 2007, Congressman Rangel will not receive anything of value from CCNY by virtue of the archiving of his official papers (or the since-abandoned proposal for him to have an office at the Center), then he will not receive an “indirect gift” (SAV ¶ 190) from the charitable contributions that CCNY will use to fund that and other Center expenses. The Rangel Center is a *bona fide* academic program undertaken by CCNY to meet a critical social and educational need, not a vanity project for the Congressman, as the SAV implies, and CCNY is not, as the SAV alleges, a conduit for gifts to the Congressman. Whatever reservation the Subcommittee may have about Congressman Rangel’s role in fundraising is properly analyzed as a solicitation issue, and not transmuted into a gift issue by unprecedented legal alchemy.

D. Congressman Rangel Did Not Violate Rules Concerning the Use of Official Resources.

Consistent with House ethics rules that permit Members to fundraise for charitable organizations,¹³ the crux of Counts VII and VIII of the SAV is merely that the Congressman used the wrong letterhead, copying paper, office equipment, and the like. But for the inadvertent use of these resources, the charges recognize that there was nothing inherently wrong in his activities on behalf of the Rangel Center. The work related to a charitable endeavor on behalf of

¹² The plethora of earmarks for projects named for Members reflects the recognition that the intangible reputational benefit of such honors is too remote, inconsequential and speculative to give rise to ethics concerns. Recent earmarks for educational institutions have supported the Robert C. Byrd National Technology Transfer Center at Wheeling Jesuit University, the Robert C. Byrd Technology Center at Alderson-Broaddus College, Pat Roberts Hall at Kansas State University, the Harkin Grants program for local school remodeling in Iowa, the Shelby Engineering and Computing Sciences building at the University of South Alabama, and the Thad R. Cochran Marine Aquaculture Center at the University of Southern Mississippi.

¹³ The general ban on solicitation contains a broad exception for tax-exempt non-profit, educational and charitable organizations, on behalf of which Members may raise funds without prior Committee approval, provided they do not use official resources, receive a personal benefit, or suggest that the donor will receive “favorable consideration in official matters.” Ethics Manual at 348-49 (“As a general matter the Committee permits (without the need to seek prior Committee approval) Members . . . to solicit on behalf of [non-profit] organizations . . .”).

an important public institution in Congressman Rangel's district and the resources used were modest at best.

With respect to staff time, binding Ethics Committee precedent establishes as a matter of law that no ethics violation occurs unless the staff's unofficial activities interfere with the performance of their official duties. Thus, the Committee dismissed a complaint that Speaker Newt Gingrich improperly used the services of his congressional staff in writing one of his books. Although staff members had worked on the book, the Committee concluded that no violation took place because there was no evidence that this work caused them to neglect their official duties. *See* Statement of the Committee on Standards of Official Conduct Regarding Complaints Against Rep. Newt Gingrich, at 40 (Comm. Print Mar. 8, 1990) (“[D]ue to the irregular time frames in which the Congress operates, it is unrealistic to impose conventional work hours and rules on Congressional employees. . . . As long as employees complete those official duties required by the Member and for which they are compensated from public funds, they are generally free to engage in personal, campaign or other nonofficial activities.”).

As in the *Gingrich* matter, nothing in the record here indicates that the modest time spent on activities related to the Rangel Center¹⁴ interfered with any staff members' performance of their official duties. Furthermore, the work was done by an unpaid fellow, Dalley Tr., Vol. I, at 44 (CSOC.CBR.00017580), and had no effect on the office budget, the predicate for the claim that official resources were misused. SAV ¶¶ 210-14 (alleging misuse of the “Member's Representational Allowance,” the office budget for staff, equipment and supplies, which is reserved solely for official expenses). There is similarly no evidence of what telephone, email or office equipment was utilized in connection with such activities. If Congressman Rangel used

¹⁴ As Congressman Rangel testified, he spent very little personal time on this matter and believes the same is true of his staff. Rangel Tr. at 16-17, 63-64 (CSOC.CBR.00027431-32, CSOC.CBR.00027479-80).

the wrong resources in support of CCNY, the resources involved were modest, the policies underlying the House rules were upheld, and the goal of increasing minority representation in public service was well-meaning and praiseworthy.

E. Congressman Rangel Did Not Intentionally Misuse the Frank in Violation of 18 U.S.C. § 1719.

Section 1719 of Title 18 of the U.S. Code prohibits the use of the frank to “avoid the payment of postage.” The statute by its very terms requires a showing that the franking privilege was used for the specific purpose of avoiding payment of postage. The user’s intent is critical because merely mistaken use or misuse on a good faith belief that the mailing is official, the most that happened in this case, do not constitute violations of this statute. Under generally accepted principles of law, intent and knowledge cannot be read out of a provision of Title 18:

The contention that an injury can amount to a crime only when inflicted by intention is no provincial or transient notion. It is as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil.

Morissette v. United States, 342 U.S. 246, 250 (1952).

Count V alleges only that Congressman Rangel “used his frank on materials that were not official business.” SAV ¶ 201. There is no allegation that he did so in order to avoid paying postage that was legitimately due, and the record contains no evidence whatsoever to suggest such a specific intention. To the contrary, the Congressman and his staff believed in good faith that mailings concerning the Rangel Center fell within their official duties. *See, e.g.*, Dalley Tr., Vol. I, 51 (CSOC.CBR.00017587) (“[W]e thought of this as a legitimate use of the letterhead.”); Rangel Tr. 22-23 (CSOC.CBR.00027438-39) (“I considered [sending the letters out] an official part of my responsibility.”). They used the frank because they believed that doing so was proper, not improperly to avoid paying required postage. Accordingly, the SAV

does not allege, and the Subcommittee cannot prove, that Congressman Rangel violated 18 U.S.C. § 1719.

II. ANN S. KHEEL CHARITABLE TRUST: THE DONATIONS TO CCNY FOR THE ANN S. KHEEL SCHOLARSHIPS DID NOT BENEFIT THE RANGEL CENTER OR CONGRESSMAN RANGEL.

Congressman Rangel rejects the allegation that he benefited from the charitable activities of the Ann S. Kheel Charitable Trust (“Trust”), of which he serves as a trustee. The SAV suggests that the establishment by the Trust of a scholarship program at CCNY named for Mrs. Kheel somehow constituted “self-dealing” by Congressman Rangel. SAV ¶¶ 11-21. That theory is without any factual basis—undisputed evidence establishes that the gifts made by the Trust to CCNY for the Ann S. Kheel Scholars Program were neither directed to, nor spent on, the Rangel Center.

Ann Kheel, who died in 2003, devoted her life to civic activities in support of racial equality and opportunities for the disadvantaged and was deeply engaged in efforts to improve the lives of others, including through education. *See* Ex. 2 at ¶ 2 (Decl. of Ellen Jacobs, Mrs. Kheel’s daughter and Executive Director of the Trust). To honor Mrs. Kheel’s memory, her husband, Theodore Kheel, established the Trust to provide assistance to organizations that are dedicated to improving the lives of disadvantaged New Yorkers. *Id.* Congressman Rangel was a lifelong friend of Ann and Ted Kheel, and he has been honored to chair the Board of Trustees of the Trust. *See id.* at ¶ 4.

In December 2004, CCNY submitted a proposal to the Trust to create the Ann S. Kheel Scholars Program at CCNY. *See* CSOC.CBR.00009592-605. As envisioned by CCNY, the Program would provide scholarships to CCNY applicants “who demonstrate need, engage in public service to disadvantaged communities, make satisfactory progress, and maintain the College’s required GPA throughout the four years.” *See id.* at CSOC.CBR.00009600. The

trustees considered the proposal and approved a \$440,000 multi-year commitment program for the program. Ex. 2 at ¶ 7.¹⁵

Before the trustees approved the contribution to CCNY, Congressman Rangel fully disclosed his connection to the Rangel Center and urged that any scholarship program approved by the Trust be independent of it. May 31, 2005 Minutes (CSOC.CBR.00009668-70). Accordingly, the Ann Kheel Scholarships are available to students at any of CCNY's programs or divisions, without regard to their affiliation with the Rangel Center. *See, e.g.*, June 3, 2005 Trust Minutes (CSOC.CBR.00009690-91). No Trust funds were directed for the Rangel Center, and no Trust donation has funded anyone associated with the Center. *See* Butler Tr., Vol. I, at 23-24 (CSOC.CBR.00027234-35) ("Q: And have any of the [Ann Kheel] grant moneys been allocated or used or appropriated to the Rangel Center? A: No."); Sept. 26, 2008 E-mail from Theodore Kheel to Ellen Jacobs (CSOC.CBR.00009755); Ex. 2 at ¶ 8. The only benefit that Congressman Rangel has derived from his service as a trustee is the personal satisfaction that Ann Kheel's values are being passed down to students who share her commitment to serving the community. Ex. 2 at ¶¶ 9-10 (Congressman Rangel did not receive any economic benefit from the establishment of the Ann S. Kheel Scholarship Program). The evidence contradicts any suggestion that he received any other benefit or that he used his position as a trustee to funnel support to the Rangel Center.

III. FINANCIAL DISCLOSURE STATEMENTS AND AMENDMENTS: RESPONDENT ACTED PROMPTLY TO CORRECT UNINTENTIONAL MISTAKES.

Nearly two years ago, Congressman Rangel acknowledged mistakes in his Financial Disclosures Statements relating to the financing of his Punta Cana unit. Having become aware

¹⁵ The Trust has also funded scholarships at Hunter College and the National Urban League. Ex. 2 at ¶ 3.

of these errors, he publicly committed to undertake a review of prior Financial Disclosure Statements, to identify and correct any other, unrelated errors, for the sole purpose of ensuring compliance with House ethics standards. Thus, it was Congressman Rangel who alerted the Standards Committee to the very mistakes with which he is now charged, and which he corrected nearly one year ago in comprehensive amendments.

Even before the Investigative Subcommittee was formed at his request, the Congressman promised publicly to hire a forensic accountant to review his past Financial Disclosure Statements and to make whatever amendments this voluntary review showed to be necessary. Sept. 14, 2008 Press Statement. Preliminary drafts of the amendments prepared by the accountant were provided to Committee staff for review and comment in July 2009, and the staff's input was incorporated into the amended Financial Disclosure Statements filed on August 12, 2009.

In retrospect, Congressman Rangel did not devote sufficient personal attention to the preparation of his original annual financial disclosures. *See* Rangel Tr. at 98 (CSOC.CBR.00027514). Instead, he relied upon experienced staff, in particular his former Chief of Staff, George Dalley, to complete them. Rangel Tr. at 97 (CSOC.CBR.00027513). Mr. Dalley is a Columbia Law School graduate and experienced Hill staffer who served in various capacities with Respondent for nearly 30 years, until his retirement in June 2009. Respondent believed that Mr. Dalley had all of the information that he needed to complete the Financial Disclosure Statements. Rangel Tr. at 100 (CSOC.CBR.00027516). Mr. Dalley confirmed to the Investigative Subcommittee that he prepared the Financial Disclosure Statements, was "responsible for collecting the information" and assembled it principally from the Congressman's files and from Mrs. Rangel, who handled the family's financial affairs and

maintained their financial records. Dalley Tr., Vol. I, at 8 (CSOC.CBR.00017544). The process was flawed, and it resulted in incomplete reporting. The extraordinary measures voluntarily undertaken by the Congressman attest to his sincere regret, good faith and acceptance of responsibility for the mistakes that were made in his financial disclosures.

Congressman Rangel does, however, take issue with two allegations in the SAV relating to his amended financial disclosures: paragraph 125, alleging that he should have disclosed the forgiveness of mortgage interest on his Punta Cana unit, and paragraph 142, describing as a violation the inadvertent omission from the 2008 Statement of his service on the Board of the Ann Kheel Trust. As to the former, the Congressman's counsel addressed the issue with the staff on more than one occasion, providing Committee staff with the views of the Congressman's accountant on the issue. Neither then, nor in reviewing the draft amendments, did the staff suggest that they disagreed with the expert's analysis or that the information should be included in the amendments.¹⁶ As to the latter, as soon as Congressman Rangel learned of the inadvertent mistake in the 2008 Statement, his counsel vetted with the staff the Congressman's intention to defer amending the disclosure solely because of the pendency of this proceeding. *See* Rangel Tr. at 233 (CSOC.CBR.00027649) (Committee counsel's confirmation of these conversations). The staff expressed no objection and made no suggestion that doing so would violate the ethics rules. In both cases, the Subcommittee's charge is thus inconsistent with the Congressman's consultations with the Committee's staff. At the very least, the Congressman should have been given notice of the staff's concerns and an opportunity to correct the 2008 filing prior to being charged with an ethics violation. *See* Ethics Manual p. 264.

¹⁶ *See, e.g.*, internal Committee note *available at* <http://www.scribd.com/doc/23242405/Tiahrt-Ethics-Investigation#> (last visited July 20, 2010) (showing that the staff had reviewed the draft amendments and concluding that the "drafts appear[ed] in good shape").

IV. CONGRESSMAN RANGEL HAS FULLY COMPLIED WITH HIS TAX OBLIGATIONS.

Congressman Rangel acknowledged publicly, prior to the establishment of the Investigative Subcommittee, that his tax returns omitted rental income derived from his investment in the Punta Cana resort located in the Dominican Republic and that he had filed amendments and paid additional taxes. Congressman Rangel has done everything within his power to fulfill his legal obligations in this regard, and to the best of his knowledge, nothing further is required.

V. LENOX TERRACE: THE USE OF APARTMENT 10U AS A CAMPAIGN OFFICE WAS NOT A PERSONAL BENEFIT OR FAVOR TO CONGRESSMAN RANGEL.

The owner of Lenox Terrace leased Apartment 10U to Congressman Rangel for use as a campaign office not as a favor to him, but rather to obtain a paying tenant for a long-vacant apartment. The campaign always paid the maximum rent allowed by law. Experts consulted by the Investigative Subcommittee and who are employed by the New York state agency that administers the rent stabilization laws testified that non-residential use of the apartment was permitted under those laws and did not affect the rent ceilings. The Congressman received no special benefits or favors from his landlord, and he took no official action on behalf of the landlord that was, or even appeared to be, influenced by the lease of Apartment 10U. Accordingly, Respondent did not violate Clause 5 of the Code of Ethics for Government Service. *See Code of Ethics for Government Service, cl. 5 (violation requires acceptance of a favor or benefit “under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties”).*

Since 1989, Congressman Rangel and his wife have made their home in Lenox Terrace, an apartment complex in the heart of Harlem. In 1996, when the Congressman leased Apartment

10U as a fundraising office for his campaign, the un-air-conditioned and unrenovated unit had been vacant for several months, and the building had a 20 percent vacancy rate and was experiencing cash flow problems. *See* CSOC.CBR.00029357-58. The landlord's policy was to lease units on a first-come, first-served basis. *See* Simon Tr., Vol. I, at 26 (CSOC.CBR.00016542) ("It is usually first come, first served . . . [i]f you are there first to sign the lease and deliver your check, you would get the apartment."). Every witness associated with the landlord testified that at the inception of the lease for Apartment 10U, and for many years thereafter, ability to pay was essentially the landlord's only consideration. *See* Griffel Tr. at 38, 47, 52 (CSOC.CBR.00017785, CSOC.CBR.00017794, CSOC.CBR.00017799); Simon Tr., Vol. I, at 78-79 (CSOC.CBR. 00016594-95). There is no evidence that Congressman Rangel's status as a public official entered into the landlord's decision to lease a rent-stabilized unit to him.

The 10U lease was not a special concession to Congressman Rangel, as the campaign always paid the maximum rent permitted by law for the apartment. *See* Simon Tr., Vol. I, at 51 (CSOC.CBR.00016567) (Congressman Rangel "always paid the maximum lawful rent for the apartments he has leased in the Lenox Terrace."). Gerald Garfinkle, a New York State Housing official called by the Committee as an expert on rent-stabilization law, confirmed based on publicly available records that the maximum legal rent was paid each year. Garfinkle and Melnitsky Tr. at 36 (CSOC.CBR.00017701) ("Congressman Rangel was paying the same rent increases that any rent stabilized tenant would pay."). According to the former Chief Operating Officer of the landlord and its management company, a landlord is indifferent to the use of a unit, provided that the tenant pays the maximum rent and the use is not disruptive. *See generally* Rubler Tr. at 37-39 (CSOC.CBR.00018482-84); *see also* Simon Tr., Vol. I, at 78-79 (CSOC.CBR.00016594-95).

The record establishes that the landlord understood that Apartment 10U was being used as a campaign office, and not for residential purposes:

1. The landlord knew that the Rangels resided on the 16th floor of the building, where they had lived since 1988;
2. The rent for Apartment 10U was paid with checks issued by Congressman Rangel's campaign finance committee or leadership PAC, rather than the personal checks by which Congressman Rangel or his wife paid rent for their living units. Capel Tr., Vol. I, at 52 (CSOC.CBR.00018178); Swett Tr. at 27-28 (CSOC.CBR.00019171-72). As a matter of law, the repeated acceptance of those rent checks established the landlord's agreement to the use of Apartment 10U as the campaign's office. *See, e.g., Rose v. Spa Realty Assoc.*, 366 N.E.2d 1279, 1280-82, 397 N.Y.S.2d 922, 924-25 (1977); *see also* Simon Tr., Vol. I, at 79-81 (CSOC.CBR.00016595-97) (staff is expected to inquire if payor on rent checks suggests that unit is being used other than as expected);
3. The landlord approved in advance changes designed to outfit the unit as an office, including the addition of multiple phone lines and installation of built-in desks and shelves. *See* Soundias Tr. at 20 (CSOC.CBR.00019558).
4. The campaign staff regularly interacted with the landlord's building services and management personnel. Swett Tr. at 22-24 (CSOC.CBR.00019166-68); Rankin Tr., Vol. I, at 24-25 (CSOC.CBR.00017046-47); Soundias Tr. at 20-23 (CSOC.CBR.00019558-61);
5. The campaign committee received mail and deliveries at this location. Swett Tr. at 15-16 (CSOC.CBR.00019159-60);
6. The use of Apartment 10U as a campaign office was publicly disclosed in the Congressman's Federal Election Commission reports throughout the period. *See, e.g.,* 1996 and 1997 Year-End Rangel for Congress FEC Reports, *available at* www.fec.gov/disclosure.shtml (last visited on July 20, 2010); and
7. Peter Soundias, the Assistant Superintendent at Lenox Terrace for 27 years, testified that it was common knowledge in the Lenox Terrace community that Apartment 10U was a campaign office and that he saw the staff frequently. Soundias Tr. at 17-18, 21-23 (CSOC.CBR. 00019555-56, CSOC.CBR.00019559-61).

The original lease recited that Apartment 10U was to be used "for living purposes only" (SAV ¶ 153) not because the landlord misunderstood the intended use of the apartment, but because the rental agent as a matter of routine used the company's pre-printed standard lease

form. Indeed, witness after witness confirmed to the Subcommittee that they knew well before 2006 that the unit was being used by the campaign, yet the renewal lease executed that year nevertheless recites that it is subject to the prior terms and conditions. *See, e.g.*, CBR001500-01 (2006 renewal lease); Rankin Tr., Vol. I, at 22 (CSOC.CBR.00017044); Soundias Tr. at 17-18, 21-23 (CSOC.CBR.00019555-56, CSOC.CBR.00019559-61). The landlord plainly ratified the non-residential use of the apartment by renewing the lease on multiple occasions.

Congressman Rangel did not, as the SAV implies at paragraph 150, misrepresent in an application for Apartment 10U that his son Steven would occupy the apartment. Nothing in the application references Apartment 10U. *See* Application (CSOC.CBR.00004821) (line for “Apartment” on applicant form, which was “for office use only,” is blank). The SAV omits the fact that the identical application appears in the landlord’s file for Apartment 16M, except that this copy has a handwritten notation “for Apt. 16M,” indicating that the Congressman submitted it in anticipation that his son would rent that unit. Ex. 3 (copy of application with handwritten notation). Steven Rangel discussed with his parents the possibility of renting Apartment 16M (S. Rangel Tr. at 10-11 (CSOC.CBR. 00019018-19)), a studio adjacent to his parents’ apartment, and the Rangels ultimately rented that unit to expand their living quarters while Steven attended law school and lived at home. Since Steven never considered or discussed the possibility of renting Apartment 10U, S. Rangel Tr. at 40-41 (CSOC.CBR.00019048-49), it appears that a copy of an application for Apartment 16M was simply misfiled.

Nor were the renewals of the 10U lease a favor to Congressman Rangel. Although a landlord is not legally required to renew a non-residential lease at the end of its term, the landlord is free to do so as a matter of its business judgment. Garfinkle and Melnitsky Tr. at 11 (CSOC.CBR.00017676). At Lenox Terrace, the landlord accepted subleases (even, from time to

time, unauthorized subleases that violated the lease) when in its economic interest to do so. *See* Simon Tr., Vol. I, at 71, 94-95 (CSOC.CBR.00016587, CSOC.CBR.00016610-11); Griffel Tr. at 38 (CSOC.CBR.00017785); *see also* Rubler Tr. at 37-40 (CSOC.CBR.00018482-85). (unauthorized commercial use of residential apartment acceptable to landlord if non-disruptive tenant pays full legal rent). Ousting a tenant paying the maximum lawful rent makes economic sense only if the landlord can charge the next tenant substantially more by renovating the unit. Lenox Terrace’s “very expensive renovation program” required the landlord to invest “a lot of money up front,” on the order of \$50,000, with an uncertain return on that investment. Simon Tr., Vol. I, at 49 (CSOC.CBR.00016565). Thus, business reasons dictate whether and when a landlord elects to dispossess a reliable tenant in order to renovate the unit. Simon Tr., Vol. I, at 51 (CSOC.CBR.00016567) (renovation decisions depend on market conditions, existing inventory and schedule of other renovations). In addition, this landlord generally focused its legal action against tenants who sublet their apartments for more than the stabilized rent and secretly pocketed the difference. *See* Simon Tr., Vol. I, at 92-93 (CSOC.CBR.00016608-09). But Apartment 10U was not an illegal sublet—the landlord had accepted its non-residential use—and the tenant was not secretly pocketing more rent than it was paying under the lease. *See* Capel Tr., Vol. II, at 98-99 (CSOC.CBR.00027406-07) (director of Rangel’s district office did not consider 10U lease like an illegal sublet). Thus, the fact that the landlord declined to renew the leases of some tenants (SAV ¶ 160) does not prove that it renewed the lease for Apartment 10U because Congressman Rangel was a public official.

Nor did Congressman Rangel receive any preferential treatment from the landlord because his name appeared on a “special handling list” of prominent residents, as paragraph 162 of the SAV implies. This allegation ignores the undisputed testimony in the record that:

1. None of the residents, including Congressman Rangel, were informed that their names appeared on such a list. *See* Simon Tr., Vol. II, at 20 (CSOC.CBR.00016637); Rankin Tr., Vol. II, at 17 (CSOC.CBR.00017100);
2. The list was created for the purpose of identifying prominent tenants to ensure that the staff treated them courteously. *See* Soundias Tr. at 10 (CSOC.CBR.00019548) (list was to let the staff know “don’t piss them off”);
3. The only courtesy extended to tenants on the list was the courtesy of a phone call, rather than written notice, if their rent checks were not received when due. Rankin Tr., Vol. II, at 15-17 (CSOC.CBR.00017098-100). *See generally* Simon Tr., Vol. II, at 14-15, 19-20 (CSOC.CBR.00016631-32, CSOC.CBR.00016636-37); Keene Tr. at 12-13 (CSOC.CBR.00017188-89); Rankin Tr., Vol. II, at 13-18 (CSOC.CBR.00017096-101).

Indeed, nine separate witnesses associated with the landlord or its management company testified that to their knowledge, Congressman Rangel never asked for special treatment:

- James Booker, Lenox Terrace Consultant, confirmed that the Rangels went through the same procedures as all other tenants. Booker Tr. at 10 (CSOC.CBR.00027138).
- Melissa Brown, Vice President of Residential Sales & Leasing for the Olnick Organization, owners of Lenox Terrace, said that she was never given any instructions to treat Congressman Rangel differently than anyone else. Brown Tr. at 23 (CSOC.CBR.00018437).
- Jennifer Filipelli, Operations Controller for Hampton Management, the management company, testified that Congressman Rangel was not treated “any differently” than any other tenant. Filippelli Tr., Vol. I, at 22 (CSOC.CBR.00018093).
- Harold Griffel, former Lenox Terrace Controller, stated that Congressman Rangel was accorded “no special privileges.” Griffel Tr. at 7, 9, 67-68 (CSOC.CBR.00017754, CSOC.CBR.00017756, CSOC.CBR.00017814-15) (“I didn’t give him any special privileges.”).
- Dion Keene, Lenox Terrace General Manager, affirmed that Congressman Rangel and Mrs. Rangel were not given any special treatment or treated differently than any other tenants. Keene Tr. at 9-13, 16 (CSOC.CBR.00017185-89, CSOC.CBR.00017192).
- Darryl Rankin, Vice President of the Residential Division for Hampton Management and former Lenox Terrace General Manager, said that the Rangels were treated the same as other tenants. Rankin Tr., Vol. II, at 63, 65, 68

(CSOC.CBR.00017146, CSOC.CBR.00017148, CSOC.CBR.00017151).

- Bruce S. Simon, President of the Olnick Organization, confirmed that no one has ever suggested that Congressman Rangel be given special treatment. Simon Tr., Vol. II, at 38-39 (CSOC.CBR.00016655-56).
- Peter Soundias, Assistant Superintendent of Lenox Terrace, said that he was provided no special instructions on how to treat the Rangels and that the Rangels followed the same procedures as everyone else in the building. Soundias Tr. at 6-7, 10-11 (CSOC.CBR.00019544-45, CSOC.CBR.00019548-49).
- Deborah Thompson, Lenox Terrace Leasing Agent, avowed that she was never given any instructions to treat the Rangels differently from anyone else. Thompson Tr. at 42-43 (CSOC.CBR.00019371-725).

Not a single witness testified that Congressman Rangel ever asked him or her for special treatment.

Paragraphs 163-67 of the SAV hint, but do not allege, that Congressman Rangel took official action for the benefit of the landlord. Both as alleged and as shown by the evidence, these contacts with the landlord were completely innocuous. *First*, Congressman Rangel's district director "worked with" Lenox Terrace management to resolve complaints from constituents who were the subject of eviction action. SAV ¶¶ 163-64. The testimony, however, stated clearly that the evictions were not unique to Lenox Terrace and identified only a single instance involving a Lenox Terrace tenant, whom the staff director declined to help because the sublet was clearly unauthorized. Capel Tr., Vol. II, at 39-43 (CSOC.CBR.00027347-51). There is no evidence that Congressman Rangel himself knew about this particular tenant. *Second*, with respect to the alleged rent strike (SAV ¶¶ 164-65), the record contains no evidence of any action by the Congressman, and does not even establish the subject of the tenants' complaints. Capel Tr., Vol. II, at 39-41 (CSOC.CBR.00027347-49). *Third*, paragraph 167 alleges that Congressman Rangel met with executives of Lenox Terrace's owner about proposed development plans. The record establishes that the presentation was merely informational, the

same briefing that was provided to groups of tenants, various community groups and other public officials. Rubler Tr. at 53-54 (CSOC.CBR.00018498-99). There is no evidence—or even an allegation—that Congressman Rangel took any action in response, was asked to favor, or even appeared to favor, the landlord in any official action. There is no basis to suggest that the lease of Apartment 10U in any way influenced the Congressman’s official acts.

VI. SPECIFIC DEFENSES

FIRST DEFENSE

The Investigative Subcommittee has impaired Congressman Rangel’s ability to present an adequate defense in violation of Committee Rule 22(e), Congressman Rangel’s rights under the due process clause of the Fifth Amendment to the U.S. Constitution and principles of fundamental fairness. These violations include, but are not limited to, the following:

1. The Investigative Subcommittee entered a scheduling order on June 17, 2010 shortening the time for Congressman Rangel to file motions and his Answer without providing Congressman Rangel with notice or an opportunity to be heard. The Order failed to identify the “special circumstances” that purportedly justified denying Congressman Rangel the full time allowed by the rules in which to prepare his motions and Answer, and there were none.

2. The evidentiary record in this matter was provided to Congressman Rangel in a manner that substantially impaired his ability to prepare his defense. After devoting 21 months to its investigation, the Investigative Subcommittee allowed Congressman Rangel inadequate time to review the 51 witness transcripts and thousands of pages of documents that were presented in a scrambled and disorganized manner.

Although the Investigative Subcommittee compiled and numbered the exhibits for use when questioning witnesses, those numbered exhibits have not been provided to Congressman Rangel. Thus, unless a document is described in great detail in the transcripts—which is rarely

the case—the reader is left to guess at the document the witness is addressing. Even when the document’s identity can be ascertained, the reader must nevertheless conduct a search of every document in every unnamed file folder to locate it. Consequently, without the numbered exhibits, the testimony is not complete. As a result, the full record has not been provided to Congressman Rangel, precluding the Investigative Subcommittee from relying on any testimony relating to any exhibit. Committee Rule 26(c) (Investigative Subcommittee must furnish to Congressman Rangel all portions of the record on which it intends to rely).¹⁷ The Subcommittee declined to explain its failure to provide these materials and did not respond to correspondence dated June 2, 2010, requesting these materials and putting it on notice of the insufficiency of the record in their absence. Especially in light of the truncated deadlines established by the Investigative Subcommittee’s June 17, 2010 Order, the harm to Congressman Rangel’s defense may be irreparable.

3. The Investigative Subcommittee failed to provide Congressman Rangel with a copy of the apartment application referenced in paragraph 150 of the SAV that contains a handwritten notation “for Apt. 16M,” indicating that Congressman Rangel submitted the application in anticipation that his son, Steven Rangel, would rent Apartment 16M, and not Apartment 10U. In failing to produce the copy of the apartment application with the “16M” notation, the Investigative Subcommittee violated the rule requiring that it furnish Congressman Rangel with all exculpatory evidence and has impaired Congressman Rangel’s ability to defend himself against the allegation that he submitted an application stating that Steven Rangel would occupy Apartment 10U.

4. Congressman Rangel’s access to witnesses has been impaired and, absent relief,

¹⁷ Similarly, the failure to identify a document about which a witness gave favorable testimony constitutes the withholding of exculpatory evidence to which Congressman Rangel is entitled by Committee Rule 25.

will continue to be impaired by the Investigative Subcommittee’s instructions to witnesses not to communicate with anyone regarding any aspect of the witnesses’ testimony. *See, e.g.*, Garfinkel and Melnitsky Tr. at 52 (CSOC.CBR.00017717); Butler Tr., Vol. II, at 64 (CSOC.CBR.00027308). No legal authority permits such an instruction by the Investigative Subcommittee, and it is inconsistent with well-established principles of constitutional law and the D.C. Rules of Professional Conduct, which generally prohibit a lawyer from even requesting—let alone instructing—a witness to refrain from voluntarily giving relevant information to another party. *See, e.g., Gregory v. United States*, 369 F.2d 185, 188-89 (D.C. Cir. 1966) (reversing conviction because instruction to fact witness not to cooperate with defense counsel denied defendant a fair trial); D.C. Bar Rule 3.4(f). The “quest [for truth] will more often be successful if both sides have an equal opportunity to interview the persons who have the information from which the truth may be determined.” *Gregory*, 369 F.2d at 188. The Subcommittee’s instruction hampered Congressman Rangel’s ability to obtain evidence from witnesses during the investigative stage of this proceeding and will continue to do so unless that instruction is rescinded formally and in writing, making it clear that witnesses may communicate with his counsel without fear of reprisal from a congressional committee.

5. The Investigative Subcommittee failed to provide a complete and meaningful response to Congressman Rangel’s Motion for a Bill of Particulars and Motion to Dismiss. *See, e.g.*, Mem. in Supp. of Order Denying Mot. to Dismiss at 11 (refusing to respond on issue of whether archiving of papers constitutes a “favor or benefit” to Congressman Rangel).

SECOND DEFENSE

Congressman Rangel realleges and incorporates by reference his Motion to Dismiss filed on June 28, 2010.

THIRD DEFENSE

The Investigative Subcommittee has acted beyond the scope of its authority and exceeded its jurisdiction under one or more of the Statements of Jurisdiction adopted by the Committee on Standards of Official Conduct.

FOURTH DEFENSE

The Statement of Alleged Violation purports to state violations of the Ethics in Government Act and House Rule XXVI with respect to Congressman Rangel's 2008 Financial Disclosure Statements. These allegations violate the House Ethics Manual, which requires that the Committee on Standards of Official Conduct notify the reporting individual of a potential problem and give that individual the opportunity to amend within a specified period. When consulted about the very matters charged in paragraphs 125 and 142 of the SAV as violations, the Committee staff took no objection and made no suggestion that additional disclosures were required, tacitly agreeing that none were necessary. The Committee on Standards of Official Conduct has not provided Congressman Rangel with the notice and opportunity required by the Manual.

FIFTH DEFENSE

The allegations in the Statement of Alleged Violation related to Congressman Rangel's 2008 Financial Disclosure Statements are barred by the doctrines of laches, estoppel, and waiver.

SIXTH DEFENSE

Congressman Rangel's assistance in launching CCNY's program to educate disadvantaged students at a public university for public service careers served important public purposes and constituted a service to constituents, which he believed in good faith to be within the scope of his official duties as an elected Congressman of CCNY's district.

SEVENTH DEFENSE

The fact that Congressman Rangel sought and received earmarks for the Rangel Center demonstrates that it was properly regarded as a matter of public concern and within his official duties. It is common for Members to request that appropriations designate funds for use in specific programs named for them that benefit their constituents and the public at large (*e.g.*, the Robert C. Byrd National Technology Transfer Center at Wheeling Jesuit University, and the Thad R. Cochran Marine Aquaculture Center at the University of Southern Mississippi).

EIGHTH DEFENSE

Congressman Rangel did not “solicit” donations for the Rangel Center within the meaning of 5 U.S.C. § 7353 and the ethics rules.

NINTH DEFENSE

The SAV’s construction and application of the solicitation ban exceeds the scope of the statute and the guidelines set forth in the Ethics Manual.

TENTH DEFENSE

The work related to the Rangel Center was mainly performed by unpaid fellows. The time spent on the Rangel Center by paid staff did not interfere with the staff’s official duties, an essential element of a charge based on the misuse of staff time.

ELEVENTH DEFENSE

Paragraphs 11-21 of the SAV related to the Ann S. Kheel Charitable Trust (“Trust”) should be stricken from the SAV because they concern a matter not properly before the Subcommittee. No evidence supports the suggestion that Congressman Rangel misused his position as a member of the Board of the Trust to funnel support to the Rangel Center. The Trust did not direct its contribution to CCNY for the benefit of the Rangel Center, and no one

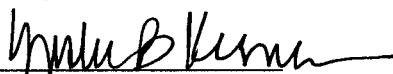
associated with the Rangel Center received funding from this program.

Pursuant to Committee Rule 22, Congressman Rangel denies each and every allegation of the Statement of Alleged Violation not expressly admitted herein.

By undersigned counsel, Congressman Rangel hereby gives notice that he reserves all of the protections of the Speech or Debate Clause of Article I, Section 6 of the U.S. Constitution in connection with this proceeding and the matters covered by it.

Dated: July 28, 2010

Respectfully submitted,



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