

ADOPTED BY THE COMMITTEE ON ETHICS ON MARCH 6, 2018

**115TH CONGRESS, 2ND SESSION
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ETHICS**

**IN THE MATTER OF ALLEGATIONS RELATING TO
REPRESENTATIVE LUIS V. GUTIÉRREZ**

MARCH 22, 2018

Ms. BROOKS from the Committee on Ethics submitted the following

REPORT

COMMITTEE ON ETHICS

Susan W. Brooks, Indiana

Chairwoman

Kenny Marchant, Texas

Leonard Lance, New Jersey

Mimi Walters, California

John Ratcliffe, Texas

Theodore E. Deutch, Florida

Ranking Member

Yvette D. Clarke, New York

Jared Polis, Colorado

Anthony Brown, Maryland

Steve Cohen, Tennessee

REPORT STAFF

Thomas A. Rust, *Chief Counsel/Staff Director*

Brittney L. Pescatore, *Director of Investigations*

Megan H. Savage, *Counsel to the Chairwoman*

Daniel J. Taylor, *Counsel to the Ranking Member*

David W. Arrojo, *Counsel*

Kathryn Lefebber Donahue, *Senior Counsel*

Molly N. McCarty, *Investigator*

Andrew Kleiman, *Investigative Clerk*

Susan W. Brooks, Indiana
Chairwoman
Theodore E. Deutch, Florida
Ranking Member



ONE HUNDRED FIFTEENTH CONGRESS

U.S. House of Representatives

COMMITTEE ON ETHICS

March 22, 2018

Thomas A. Rust
Staff Director and Chief Counsel

Donna Herbert
Director of Administration

Megan Savage
*Chief of Staff and Counsel to
the Chairwoman*

Daniel J. Taylor
Counsel to the Ranking Member

1015 Longworth House Office Building
Washington, D.C. 20515-6328
Telephone: (202) 225-7103
Facsimile: (202) 225-7392

Kenny Marchant, Texas
Leonard Lance, New Jersey
Mimi Walters, California
John Ratcliffe, Texas

Yvette D. Clarke, New York
Jared Polis, Colorado
Anthony Brown, Maryland
Steve Cohen, Tennessee

The Honorable Karen L. Haas
Clerk, House of Representatives
Washington, DC 20515

Dear Ms. Haas:

Pursuant to clauses 3(a)(2) and 3(b) of Rule XI of the Rules of the House of Representatives, we herewith transmit the attached report, "In the Matter of Allegations Relating to Representative Luis V. Gutiérrez."

Sincerely,

A handwritten signature in blue ink that reads "Susan W. Brooks".

Susan W. Brooks
Chairwoman

A handwritten signature in blue ink that reads "Theodore E. Deutch".

Theodore E. Deutch
Ranking Member

CONTENTS

I.	INTRODUCTION	1
II.	PROCEDURAL BACKGROUND.....	2
III.	HOUSE RULES, LAWS, REGULATIONS, AND OTHER STANDARDS OF CONDUCT	3
IV.	BACKGROUND	5
	A. REPRESENTATIVE GUTIÉRREZ’S CONTRACT WITH SCOFIELD COMMUNICATIONS	5
	B. REQUEST FOR CHA REVIEW OF THE CONTRACT	7
	C. PAYMENTS TO SCOFIELD COMMUNICATIONS	8
	D. SERVICES PERFORMED UNDER THE SCOFIELD CONTRACT	9
	E. TERMINATION OF THE CONTRACT	14
	F. POTENTIAL LOBBYING ACTIVITIES BY SCOFIELD COMMUNICATIONS	17
	1. Greater Chicago Food Depository	17
	2. Chicago Botanical Gardens.....	19
	3. National Museum of Puerto Rican Arts and Culture	19
V.	FINDINGS.....	21
	A. UNAUTHORIZED USE OF THE MEMBERS’ REPRESENTATIONAL ALLOWANCE	21
	B. HOUSE RULE XXIII, CLAUSES 1 AND 2	31
	C. CODE OF ETHICS, SECTION 5.....	33
VI.	CONCLUSION.....	34
VII.	STATEMENT UNDER HOUSE RULE XIII, CLAUSE 3(C).....	34
	APPENDIX 1: REPORT AND FINDINGS OF THE OFFICE OF CONGRESSIONAL ETHICS (REVIEW NO. 13-7135)	
	APPENDIX 2: REPRESENTATIVE GUTIÉRREZ’S SUBMISSIONS	
	APPENDIX 3: EXHIBITS TO COMMITTEE REPORT	

**115TH CONGRESS, 2ND SESSION
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ETHICS**

**IN THE MATTER OF ALLEGATIONS RELATING TO
REPRESENTATIVE LUIS V. GUTIÉRREZ**

MARCH 22, 2018

Ms. BROOKS from the Committee on Ethics submitted the following

R E P O R T

In accordance with House Rule XI, clauses 3(a)(2) and 3(b), the Committee on Ethics (Committee) hereby submits the following Report to the House of Representatives:

I. INTRODUCTION

On December 4, 2013, the Office of Congressional Ethics (OCE) transmitted to the Committee a Report and Findings (OCE's Referral) regarding Representative Luis Gutiérrez. OCE reviewed allegations that Representative Gutiérrez used his Members' Representational Allowance (MRA) to pay his former Chief of Staff, Doug Scofield, through his firm Scofield Communications, for services that may not be paid for using MRA funds. OCE found that there was substantial reason to believe Representative Gutiérrez used funds from his MRA for an impermissible purpose – to retain Mr. Scofield to provide services to his congressional office that more closely resembled those provided by an employee or consultant, rather than a contractor – in violation of federal law and House rules. OCE's Referral also discussed a separate allegation: that Representative Gutiérrez may have impermissibly granted special favors or benefits to entities that retained Scofield Communications as a lobbyist while the firm contracted with the Member's office. However, OCE's Referral did not assert that OCE found substantial reason to believe there was merit to this allegation. Thus, OCE recommended that the Committee further review only the allegation related to misuse of the MRA.

The Committee did further review this allegation.¹ After an extensive investigation, the Committee found that although an overwhelming majority of the work Mr. Scofield performed

¹ In the interest of completeness, the Committee also reviewed the allegation – which OCE did not recommend for further review – that Representative Gutiérrez violated the Code of Ethics for Government Service, Section 5, by dispensing special favors or privileges to non-profit entities that retained Scofield Communications for lobbying or fundraising services. As discussed further in Section V.C., the Committee found no evidence that this allegation was true.

from 2003 to 2013 clearly accorded with the contract's terms, Mr. Scofield occasionally performed work for Representative Gutiérrez's office that was either "legislative" in nature or otherwise exceeded the scope of work outlined in the contract. Representative Gutiérrez thus impermissibly used MRA funds to pay Mr. Scofield for some work that exceeded the scope of the Scofield Communications contract, and the limits of what a contractor retained to provide services to a Member's congressional office may do, as defined by the Committee on House Administration (CHA). The Committee also concluded that the resulting violations, though unintentional, were significant enough to warrant a reproof by the Committee. While the Committee could not quantify the degree of the impermissible work or the associated MRA payments with exact precision, the Committee concluded, based on conservative estimation, as discussed further in this Report, that Representative Gutiérrez must reimburse his MRA in the amount of \$9,700, or approximately three percent of the total amounts paid from Representative Gutiérrez's MRA to Scofield Communications from September 2007 until the contract's termination in June 2013.

Accordingly, the Committee unanimously voted to issue this Report, which will serve as a reproof of Representative Gutiérrez's conduct, and concluded that he must reimburse the U.S. Treasury for those MRA funds used impermissibly. Upon issuance of this Report and Representative Gutiérrez's reimbursement of the amount described above, the Committee will consider this matter closed.

II. PROCEDURAL BACKGROUND

OCE undertook a preliminary review of this matter on July 26, 2013. On August 25, 2013, OCE initiated a second-phase review. On November 22, 2013, the OCE Board unanimously voted to adopt the Findings and refer the matter to the Committee with a recommendation for further review. The Committee received OCE's referral on December 4, 2013.

The Committee reviewed material provided by OCE, including its Report and Findings, along with other documentary and testimonial evidence obtained by OCE. In addition, the Committee's then-Chairman and Ranking Member sent Representative Gutiérrez a Request for Information (RFI), and Representative Gutiérrez voluntarily provided a brief narrative submission and relevant documents. In the course of the Committee's investigation, the then-Chairman and Ranking Member sent additional RFIs to Representative Gutiérrez and five of his former staff members, seeking personal or non-official email communications related to any work Scofield Communications performed for Representative Gutiérrez's office or campaign. Committee staff received and reviewed additional documents responsive to those requests.

Some of the allegations reviewed by the Committee occurred before the 112th Congress, prior to the Committee's general investigative jurisdiction, which includes the current and three previous Congresses. However, pursuant to House Rule XI, clause 3(b)(3) and Committee Rule 18(d), the Committee voted to determine that these allegations were directly related to alleged

violations that occurred within the Committee’s general jurisdiction and did investigate those allegations.²

In total, Committee staff reviewed over 10,000 pages of documents, including Representative Gutiérrez’s submissions and the other documents described above. The Committee also interviewed sixteen individuals, including current and former members of Representative Gutiérrez’s staff, current and former CHA staff who consulted Representative Gutiérrez’s staff on the Scofield contract, Mr. Scofield, and Representative Gutiérrez, who fully cooperated with the Committee’s investigation.

In December 2017, the Committee notified Representative Gutiérrez that it was considering the adoption of a public report that would serve as a reproof of him regarding this matter. Before the Committee decided how to resolve this matter, in accordance with House Rules, Representative Gutiérrez was invited to be heard by the Committee in writing and/or in person.³ Representative Gutiérrez opted to both provide a written submission, via counsel, and to appear in person before the Committee. The Committee carefully considered Representative Gutiérrez’s written submission and his appearance before the Committee while deliberating how to resolve the matter. Ultimately, the Committee determined that the appropriate resolution of this matter was to issue this Report, which will serve as a reproof of Representative Gutiérrez’s conduct.

III. HOUSE RULES, LAWS, REGULATIONS, AND OTHER STANDARDS OF CONDUCT

Representative Gutiérrez’s contract with Scofield Communications to provide services to his congressional office may have implicated the following laws, House Rules, regulations, or other standards of conduct.

Federal appropriations law states that “[a]ppropriations shall be applied only to the objects for which the appropriations were made”⁴ MRA expenditures are reimbursable according to regulations contained in the *Members’ Congressional Handbook (Members’ Handbook)*, which provides examples of items for which reimbursement may be permitted, as well as a list of prohibited expenditures.⁵ Generally, the MRA “may only be used for official and representational expenses,” and “may not be used to pay for any expenses related to activities or events that are primarily social in nature, personal expenses, campaign or political expenses, or House committee expenses.”⁶ The *Members’ Handbook* states:

² Representative Gutiérrez paid Mr. Scofield with MRA funds for his services under the contract from March 2003 to June 2013. Thus, any alleged MRA payments to Mr. Scofield for services performed from January 5, 2011, to June 2013 occurred after the 112th Congress began on January 5, 2011. Any payments for services rendered by Mr. Scofield from March 2003 to January 4, 2011, occurred prior to the start of the 112th Congress, and thus would be outside of the Committee’s usual jurisdiction.

³ House Rule XI, cl. 3(a)(2).

⁴ 31 U.S.C. § 1301(a).

⁵ Exhibit 1 (*Members’ Handbook* (2001)) at 8.

⁶ *House Ethics Manual* (2008) at 323 (hereinafter *Ethics Manual*).

Each Member is personally responsible for the payments of any official and representational expenses incurred that exceed the provided MRA or that are incurred but are not reimbursable under these regulations.⁷

The *House Ethics Manual* also states that “Members may be personally liable for misspent funds or expenditures exceeding the MRA.”⁸

Regarding the retention of outside contractors or consultants, the *Members’ Handbook* explains that “only committees are authorized . . . to procure the temporary services of consultants. Consultants are not authorized for Member Offices.”⁹ Rather, Member offices may only retain “contractors.” The *Member’s Handbook* in existence at the time that Representative Gutiérrez signed the initial contract with Scofield Communications stated that a Member office:

may contract with firms or individuals only for general, non-legislative, office services (*e.g.*, equipment maintenance, systems integration, data entry, staff training, photography, custodial services) for a specific, limited time period not to exceed the Member’s term. Such contracts are reimbursable. Such contractors are not employees of the House and are ineligible for government-provided benefits.¹⁰

The *Members’ Handbook* also states that “Members are advised to consult the Committee on House Administration when entering into such contracts.”¹¹

The Code of Ethics for Government Service (Code of Ethics), section 5, provides that any person in government service should “never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not”¹² The *Ethics Manual* notes the Committee “has cautioned all Members ‘to avoid situations in which even an inference might be drawn suggesting improper action.’”¹³

Finally, House Rule XXIII, clause 1, states that “[a] Member . . . shall behave at all times in a manner that shall reflect creditably on the House,” and clause 2 states that “[a] Member . . . shall adhere to the *spirit and the letter* of the Rules of the House” (Emphasis added).

⁷ Exhibit 1 at 9; *see also Member’s Handbook* (2017) at 2.

⁸ *Ethics Manual* at 323.

⁹ Exhibit 1 at 13 (citing 2 U.S.C. § 72a (recodified at 2 U.S.C. § 4301)).

¹⁰ *Id.* The current version of the *Members’ Handbook*, last updated on February 27, 2018, includes a revised contractor rule stating that general office services should be “outside core office functions.” *See* https://cha.house.gov/sites/republicans.cha.house.gov/files/documents/member_services_docs/Members%20Handbook%20115th.pdf, at 6 (last accessed Mar. 6, 2018). It also includes a revised consultant rule, which explicitly prohibits hiring speech writers and communications advisers. *See id.*

¹¹ *Id.*

¹² Code of Ethics for Government Service ¶ 5.

¹³ *Ethics Manual* at 27.

IV. BACKGROUND

Representative Luis Gutiérrez is the Representative for the Fourth District of Illinois. He has held that position since 1993. Douglas Scofield served as Representative Gutiérrez’s chief of staff from 1993 until 2002, when he resigned his position in order to serve as deputy campaign manager for then-Representative Rod Blagojevich’s successful Illinois gubernatorial campaign.¹⁴ After working for a few months as then-Governor Blagojevich’s deputy governor, Mr. Scofield resigned from that position to form his own consulting firm, Scofield Communications, in early 2003.

A. *Representative Gutiérrez’s Contract with Scofield Communications*

Shortly after founding Scofield Communications, Mr. Scofield, through his consulting firm, negotiated a contract with Representative Gutiérrez’s congressional office. Mr. Scofield told Committee staff he remained in touch with Representative Gutiérrez during his time on the Governor’s staff; when Representative Gutiérrez learned that Mr. Scofield resigned from his new position, he “wanted to know if [Mr. Scofield] wanted to come back on [official] staff.”¹⁵ When Mr. Scofield declined this offer, Representative Gutiérrez decided to retain him as a contractor instead. At the time he made this decision, Representative Gutiérrez told his then-Chief of Staff “we’d have Doug back on staff.”¹⁶ When Committee staff asked Representative Gutiérrez what he meant by this statement, he said he had wanted to “see if [Mr. Scofield] could continue to help with our staff and to work in our office,” though not as an official employee.¹⁷

Representative Gutiérrez told Committee staff he had no role in drafting his office’s initial contract with Scofield Communications.¹⁸ Rather, Representative Gutiérrez delegated the task of preparing the contract to his then-Chief of Staff and Mr. Scofield.¹⁹ Representative Gutiérrez did not remember giving either his then-Chief of Staff or Mr. Scofield any parameters for preparing the contract.²⁰

The initial contract between Representative Gutiérrez and Scofield Communications stated:

The Office of Congressman Luis V. Gutierrez will retain Scofield Communications, LLC, to provide non-legislative, general office services to assist Congressman Gutierrez in his efforts to serve the people of the 4th Congressional District of the State of Illinois.

¹⁴ 18(a) Interview of Doug Scofield.

¹⁵ *Id.*

¹⁶ Exhibit 2 at 3.

¹⁷ 18(a) Interview of Representative Gutiérrez.

¹⁸ *Id.*

¹⁹ *Id.* (“[M]y Chief of Staff and Doug Scofield had a very intimate working relationship for many years, and . . . I delegated to them this responsibility.”).

²⁰ *Id.*

Neither the contract, nor the *Members' Handbook*, define “non-legislative” office services. However, the version of the *Members' Handbook* then in existence listed examples of the types of “non-legislative” work a contractor may perform for a personal office within the category of “general office services.” Though not intended to be exhaustive, the list included services such as “equipment maintenance, systems integration, data entry, staff training, photography, custodial services, [and] web services.”²¹ Representative Gutiérrez told Committee staff he never had discussions with either his then-Chief of Staff or Mr. Scofield about their understanding of the relevant CHA rules on hiring contractors.²² Nor did Representative Gutiérrez recall having any conversation with Mr. Scofield as to whether or not Mr. Scofield would or would not be allowed to perform specific functions for his congressional office.²³

The contract also included a Scope of Work section, which listed tasks Scofield Communications “may” perform under the contract:

<p>Scope of Work</p> <p>Work may include:</p> <ul style="list-style-type: none">▪ Staff development and training; which could include the following non-legislative areas:<ul style="list-style-type: none">• Assisting staff or training staff in the areas of preparing remarks or press events.• Assisting or training staff with casework or community outreach efforts.• Providing staff with guidance and training as determined necessary by the member of Congress or Chief of Staff.▪ Attending non-legislative meetings as determined necessary by the member of Congress or Chief of Staff.▪ Assisting or training the staff to publicize programs and activities of Congressman Gutierrez▪ Other relevant and appropriate areas as determined by the Member of Congress and Chief of Staff.

While some of these areas of potential work are described broadly, the entire “Scope of Work” was subject to the contract’s first clause, which stated that Scofield Communications was retained for the purpose of providing Representative Gutiérrez’s office with “non-legislative, general office services.”²⁴

²¹ Exhibit 1 at 7.

²² 18(a) Interview of Representative Gutiérrez.

²³ *Id.*

²⁴ Exhibit 3.

Representative Gutiérrez personally signed the original contract between his congressional office and Scofield Communications on April 1, 2003.²⁵ Though Representative Gutiérrez told Committee staff he read the contract before signing it,²⁶ he told OCE he had not read the agreement “with any attention to detail” until June 2013, when his office first received press inquiries about the office’s relationship with Mr. Scofield.²⁷

B. Request for CHA Review of the Contract

On April 1, 2003, Representative Gutiérrez’s then-Chief of Staff faxed a copy of a proposed contract with Scofield Communications – signed only by Mr. Scofield – to a professional staff member in CHA’s Department of Member Services for the (Republican) majority (hereinafter “Former Member Services Employee”). The then-Chief of Staff testified that, before sending the fax, she called CHA “on behalf of the Congressman because we want[ed] to hire a former Chief of Staff,” and asked the Former Member Services Employee whether that arrangement would be allowed.²⁸ The fax included a cover page stating: “As per conversation, please let me know [] if this contract falls within what is acceptable under the current regulations.”²⁹ The then-Chief of Staff testified that it was “impossible for [her] to remember what happened after this fax,” or whether the Former Member Services Employee called or emailed her back.³⁰

The Former Member Services Employee did not remember a phone call with Representative Gutiérrez’s then-Chief of Staff, nor did he recall an April 1, 2003, fax transmission, and current CHA staff did not locate any record of such a call or fax, or of any approval of the Scofield contract.³¹ However, CHA staff indicated that such records may not have been archived or otherwise preserved, given their age. Representative Gutiérrez also did not produce any record of his former Chief of Staff’s call with the Former Member Services Employee, or any evidence that CHA received the faxed contract, reviewed it, or approved it.

The absence of written records notwithstanding, both Representative Gutiérrez’s office and Mr. Scofield apparently operated under the belief that CHA had reviewed and approved the contract.³² Representative Gutiérrez told Committee staff: “I know we had the approval of House Administration for Doug to do many of the things that are included in this contract.”³³ Representative Gutiérrez said he knew this because his then-Chief of Staff “told [him] that it was

²⁵ *Id.*

²⁶ 18(a) Interview of Representative Gutiérrez.

²⁷ Exhibit 2 at 3.

²⁸ 18(a) Interview of Former Staffer A.

²⁹ Exhibit 4.

³⁰ 18(a) Interview of Former Staffer A.

³¹ 18(a) Interview of Former Member Services Employee.

³² *See* 18(a) Interview of Former Staffer A (“My understanding of the process is that the contractor doesn’t get paid unless House Administration approves a contract that is approvable . . . So I assume the evidence that it got approved is that they made it possible for [Mr. Scofield] to get paid.”).

³³ 18(a) Interview of Representative Gutiérrez.

approved not only one time, but in subsequent years.”³⁴ Representative Gutiérrez also believed his then-Chief of Staff showed him documents or an email from CHA stating the contract had been approved,³⁵ though the Committee found no such document.

Regardless of whether CHA ever formally approved the contract, as discussed below, there is evidence the contract was submitted for CHA’s review, and it is clear the House Finance Office received multiple versions of the contract from 2003-2013 and authorized payments under the contract from its inception until its termination in 2013. The Committee saw no indication that CHA or House Finance ever raised questions or concerns with Representative Gutiérrez or his staff about the terms of the Scofield contract, or declined to authorize any MRA payments to Scofield Communications, until a *USA Today* June 2013 newspaper story asserted that the payments may have been improper, at which point Representative Gutiérrez consulted with CHA and terminated the contract.

C. *Payments to Scofield Communications*

Beginning in March 2003, Scofield Communications issued non-itemized monthly invoices to Representative Gutiérrez’s office, charging a “fee for services: as described per contract, including staff training [and] assistance with non-legislative message development.”³⁶ Mr. Scofield told Committee staff that he personally performed nearly all of the work billed under the contract.³⁷ He also stated that the workload varied significantly by week: though he never tracked any of the hours he worked for Representative Gutiérrez, Mr. Scofield estimated he may have done as little as two hours of work during slower weeks, and as much as thirty hours during busy weeks.³⁸ Representative Gutiérrez told Committee staff he expected Mr. Scofield to do “a lot of work” under the contract, and to be available “whenever he was needed.”³⁹

For such work, Representative Gutiérrez’s office paid Scofield Communications a flat monthly retainer of \$5,500 from March to June 2003, which was reduced to \$4,500 month beginning in July 1, 2003.⁴⁰ The firm was paid \$4,500 per month until January 2013, when its monthly fee rose to \$6,000.⁴¹ Though Mr. Scofield’s firm was retained to provide services on a part-time basis, its monthly fee was at times equal to, if not greater than, what some of Representative Gutiérrez’s full-time communications staffers were paid each month.⁴² Representative Gutiérrez told Committee staff he “never really gave it much thought” that Mr.

³⁴ *Id.*; see also Exhibit 2 at 3 (Representative Gutiérrez told OCE he believed the Scofield contract had been “renewed five times under identical conditions.”).

³⁵ 18(a) Interview of Representative Gutiérrez.

³⁶ See, e.g., Exhibit 5.

³⁷ 18(a) Interview of Doug Scofield.

³⁸ *Id.*

³⁹ 18(a) Interview of Representative Gutiérrez.

⁴⁰ Exhibit 6 at 2-3.

⁴¹ Exhibit 7.

⁴² By comparison, Representative Gutiérrez’s Communications Director was paid an average of \$4,631.94 per month in 2004; in 2008, his Press Secretary was paid an average of \$4,408.65 per month.

Scofield was compensated similarly to a full-time communications director on his staff.⁴³ When Committee staff asked members of Representative Gutiérrez’s official staff to explain the parity in pay, they explained that Mr. Scofield was highly trained and valued within the office for his knowledge of Representative Gutiérrez and his communications style.⁴⁴ Representative Gutiérrez provided a similar explanation: “Doug really understands me, how I communicate . . . and it gave me such [] confidence that I would be communicating what I really felt and what my intentions were.”⁴⁵

From March 2003 until the contract’s termination in June 2013, Scofield Communications received over \$590,000 in total MRA payments for services provided under the contract. Payments to Scofield Communications were processed by a financial administrator, who submitted any invoices, along with vouchers that accompanied each payment request, to House Finance for reimbursement from Representative Gutiérrez’s MRA. Representative Gutiérrez’s financial administrator since 2008 described her general practice for processing MRA reimbursement requests: where it is unclear if a specific expense may be paid using MRA funds, she escalates the matter to House Finance and – if it remains unclear – to CHA for guidance before processing.⁴⁶ The Committee found no evidence that any individual Scofield Communications invoices were sent to House Finance or CHA for review prior to payment. The financial administrator also told Committee staff she never referred back to CHA guidelines on retaining contractors when processing Scofield Communications invoices because the Scofield contract was “already in place when [she] came to work in the office [in 2008]. And it was approved by [House] Finance.”⁴⁷

D. Services Performed Under the Scofield Contract

The record shows Mr. Scofield performed a range of tasks consistent with the terms of the contract between Scofield Communications and Representative Gutiérrez’s congressional office. Representative Gutiérrez appears to have retained Scofield Communications in large part to obtain Mr. Scofield’s expertise in public communications. Accordingly, the Scofield contract anticipated that Mr. Scofield would be “[a]ssisting staff or training staff in the areas of preparing remarks or press events,” and “assisting or training the staff to publicize programs and activities of Congressman Gutiérrez.”

With respect to his charge to “assist” with official communications, Mr. Scofield primarily worked with Representative Gutiérrez’s communications director. Mr. Scofield focused on “helping the communications team run smoothly and ensuring consistency or strength of message,” namely by assisting on messaging and speech writing.⁴⁸ Mr. Scofield did so by regularly editing remarks prepared by official staff, assisting in responding to press inquiries, and

⁴³ 18(a) Interview of Representative Gutiérrez.

⁴⁴ See, e.g., 18(a) Interview of Former Staffer A (“[M]essage is key. And Doug, for better or for worse, mastered that so brilliantly, that he was worth it.”).

⁴⁵ 18(a) Interview of Representative Gutiérrez.

⁴⁶ 18(a) Interview of Staffer B.

⁴⁷ See *id.*

⁴⁸ 18(a) Interview of Former Staffer A.

drafting press statements and speeches for Representative Gutiérrez.⁴⁹ On various occasions, Mr. Scofield also assisted with communications tasks related to immigration casework, including working with local reporters to publicize Representative Gutiérrez’s work on such matters. In all of these circumstances, Mr. Scofield coordinated with official staff to make sure the language of any public statements reflected Representative Gutiérrez’s unique communications style.⁵⁰

Mr. Scofield also engaged in “training” Representative Gutiérrez’s communications staff. Following considerable staff turnover in 2003 (including Mr. Scofield’s own departure as Chief of Staff), there was a “hole in the office,” particularly on the messaging and communications teams.⁵¹ Leveraging his decade-long experience in messaging for Representative Gutiérrez, Mr. Scofield worked closely with the new press secretary to ensure that “the messaging moved forward,” in many cases providing initial drafts of press statements and speeches to serve as templates or guideposts.⁵² Mr. Scofield noted that this role also included a “mentoring component.”⁵³

In addition to the core communications functions, the Scofield contract anticipated that Mr. Scofield would assist or train staff with a number of other tasks, including dealing with “casework” and “community outreach efforts,” attending “non-legislative meetings,” and “[p]roviding staff with guidance and training as determined necessary by the [M]ember of Congress or Chief-of-staff.” Consistent with these terms, Mr. Scofield helped official staff to plan citizenship workshops in the district office, and spent considerable time training new official staff in a variety of areas. For example, Mr. Scofield organized, and made presentations at, staff retreats in 2003 and 2004, where DC and district staff met to improve office morale, strategize on dealing with the caseload of immigration-related constituent work, and in some cases discuss legislative efforts.⁵⁴ Representative Gutiérrez’s former Chief of Staff told Committee staff Mr. Scofield “ran” these retreats approximately once per Congress.⁵⁵

Representative Gutiérrez described Mr. Scofield’s training role to be one of “staff development” and “enhancement of skills,” and said he never saw an endpoint to Mr. Scofield’s role as a trainer under the contract.⁵⁶ Representative Gutiérrez also told Committee staff he never instructed Mr. Scofield how to train his staff, because Mr. Scofield had been training the staff when he served as Chief of Staff, and “[m]ost of the people that Doug hired were still there when he took on these new responsibilities.”⁵⁷

⁴⁹ Even so, Mr. Scofield’s speech-related work was sometimes intertwined with the legislative process, such as when he drafted, edited and commented on remarks that were intended as potential House floor speeches for Representative Gutiérrez. *See, e.g.*, Exhibit 8 (Scofield: “Thinking about the five minute . . . I will get something to you today . . .”) and Exhibit 9 (Communications Director states that “LVG wants a 5 minute on Wednesday on the PR police DOJ report” and would “like Scofield (by phone) . . . to work on it with him”).

⁵⁰ 18(a) Interview of Former Staffer A.

⁵¹ 18(a) Interview of Doug Scofield.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ 18(a) Interview of Doug Scofield; 18(a) Interview of Former Staffer A.

⁵⁵ 18(a) Interview of Former Staffer A.

⁵⁶ 18(a) Interview of Representative Gutiérrez.

⁵⁷ *Id.*

Finally, in addition to “assisting” and “training” official staff in a variety of specific areas, the contract included a broad catch-all authorization for Mr. Scofield to work in “[o]ther relevant and appropriate areas as determined by the Member of Congress and Chief of Staff.” Read without context, this term of the contract would seem to allow Representative Gutiérrez to pay Mr. Scofield, using MRA funds, to do virtually anything the Congressman or his Chief of Staff wanted done. However, it bears emphasis that, under the contract’s express terms, *all* of the work Mr. Scofield was expected to do would be in the category of “non-legislative, general office services.” That limitation matched the language of the section on retaining contractors found in the *Member’s Handbook* in effect at the time the Scofield contract was first executed. Thus, under both the terms of the contract and CHA’s guidance on hiring contractors, Mr. Scofield could only be reimbursed for performing work for the official office that was “non-legislative” in nature, and that could be characterized as “general office services.”

Despite these limitations, some of the work Mr. Scofield performed for Representative Gutiérrez’s congressional office appeared to have a legislative component. Most notably, Mr. Scofield repeatedly advised Representative Gutiérrez on legislative strategy surrounding immigration legislation. For example:

- In September 2007, the House Judiciary Subcommittee on Immigration and Border Security scheduled a hearing on the STRIVE Act, Representative Gutiérrez’s comprehensive immigration reform bill. Prior to the hearing, Representative Gutiérrez’s then-Legislative Director told Mr. Scofield “we have to start inviting witnesses this week,” and that Representative Gutiérrez asked her to “consult with [Mr. Scofield] on moving forward with planning for the hearing.”⁵⁸
- In September 2009, Representative Gutiérrez’s staff discussed a number of strategic considerations for “how to keep the pressure on the immigration debate”, including “what kind of a bill, how to roll it out and with whom.” Representative Gutiérrez’s then-Legislative Director contacted Mr. Scofield after Representative Gutiérrez asked her to write a memo laying out those considerations and get Mr. Scofield’s “opinion on them.”⁵⁹
- In a series of emails in November 2012, Mr. Scofield advised Representative Gutiérrez’s staff on “next steps” for Representative Gutiérrez’s legislative strategy on immigration reform. To “stay in the middle of the new immigration frenzy,” Mr. Scofield suggested Representative Gutiérrez meet with several Senators.⁶⁰ Mr. Scofield also suggested Representative Gutiérrez introduce his own immigration bill, because “it seems like a natural reaction from the Congressman,” and concluded it was “probably worth making everyone react to his bill.”⁶¹ After continued discussion on the subject, Mr. Scofield emailed the Communications Director, copying the then-Legislative Director: “Are we doing a bill? I think we need to lay down a marker quickly.”⁶²

⁵⁸ Exhibit 10.

⁵⁹ Exhibit 11.

⁶⁰ Exhibit 12.

⁶¹ Exhibit 13.

⁶² Exhibit 14.

- In January 2013, the then-Legislative Director sent Mr. Scofield a memorandum that Representative Gutiérrez “asked [] to put together for Scofield in particular,” outlining the “state of play with regard to legislative developments” on immigration reform and “seeking guidance [] on some key decisions.” One of the decisions facing Representative Gutiérrez, as detailed in the memo, was whether to “put his name on the bill” put forth by a bipartisan group.⁶³ Mr. Scofield replied with his thoughts on which measure or legislative coalition Representative Gutiérrez should support.⁶⁴

While there is no indication Mr. Scofield was asked to draft any part of an immigration bill, a member of Representative Gutiérrez’s staff did consult with Mr. Scofield on language for a separate bill in September 2009. On that occasion, a staff member asked for Mr. Scofield’s input on the wording of a criminal penalties provision for legislation Representative Gutiérrez planned to introduce regarding employer-owned life insurance.⁶⁵ The staffer had drafted the penalty provision of the bill and asked Mr. Scofield: “Do you think this is what the Congressman was talking about in terms of criminal penalties?” The Committee has no record that Mr. Scofield replied to this question, or that Representative Gutiérrez was aware his staff asked it.

Mr. Scofield was also apparently involved in drafting or editing legislative testimony: in April 2012, the then-Legislative Director asked Mr. Scofield to advise on changes to a draft oral statement on the subject of racial profiling to be delivered by Representative Gutiérrez at a hearing of the Senate Judiciary Subcommittee on the Constitution, Human Rights, and Civil Rights.⁶⁶

Mr. Scofield told Committee staff that any work he may have performed relating to legislation was “strategic messaging” of Representative Gutiérrez’s positions, and thus a communications function permitted under the contract.⁶⁷ When questioned about examples of his potential involvement in the legislative process, Mr. Scofield stated that “virtually everything that comes through a congressional office has a legislative component,” and he only considered those things a “legislative assistant does day-to-day, attending committee hearings, tracking legislation, writing an analysis of a bill” as the kind of “legislative” tasks he could not perform.⁶⁸ However, Mr. Scofield acknowledged he may have performed “legislative” tasks he was not authorized to perform under the contract, stating: “Did they ask me to do some things on the continuum that are more legislative than others? I suppose they did.”⁶⁹

In addition to performing work for Representative Gutiérrez’s office that appeared to include a legislative component, Mr. Scofield also performed a number of office management and administrative functions that closely approximated the duties of senior members of Representative Gutiérrez’s official staff. These functions were not clearly detailed in the “Scope of Work” section

⁶³ Exhibit 15.

⁶⁴ Exhibit 16.

⁶⁵ Exhibit 17.

⁶⁶ Exhibit 18.

⁶⁷ 18(a) Interview of Doug Scofield.

⁶⁸ *Id.*

⁶⁹ *Id.*

of the Scofield contract, and do not resemble the types of “general office services” the *Member’s Handbook* permits contractors to perform. For example:

- In February 2010, the then-Chief of Staff asked Mr. Scofield to talk with an applicant for a “press” position with Representative Gutiérrez’s office, both to inform him of the demands of the job and to answer his questions about the position.⁷⁰
- In a memorandum addressed from Representative Gutiérrez and written by his Chief of Staff, Mr. Scofield and Representative Gutiérrez’s Communications Director were asked to coordinate whenever they took vacation time “to ensure that [the] office always has press and communications coverage.”⁷¹ When asked about the memorandum, Representative Gutiérrez told Committee staff he expected Mr. Scofield “would be there” whenever the Communications Director was out of the office, so “someone of his stature and someone of his competence [would] be in a position to answer questions to the media and the press and to help [Representative Gutiérrez].”⁷²
- Mr. Scofield told Committee staff Representative Gutiérrez asked him to get “a little more involved in the district office,” to provide “leadership” in the office and fill a “vacuum in leadership” following the District Director’s demotion in 2012.⁷³
- In a September 2012 email to Mr. Scofield and the then-Chief of Staff, Representative Gutiérrez instructed Mr. Scofield to “evaluate district operations and report changes and improvements,” prepare staff evaluations and “make recommendations as to [staff] conditioned employment.”⁷⁴ While the Committee’s investigation could not confirm whether Mr. Scofield actually performed staff evaluations or made related recommendations, Representative Gutiérrez said he was “sure” that Mr. Scofield evaluated district operations and reported on changes or improvements to him.⁷⁵

Finally, along with his substantial work for Representative Gutiérrez’s official office, Mr. Scofield also worked on a variety of campaign-related tasks for Representative Gutiérrez, including, but not limited to: planning and staffing district campaign events; preparing scripts for “robo calls”; and assisting with fundraisers.⁷⁶ On at least one occasion, in January 2008, Mr. Scofield also reviewed Representative Gutiérrez’s responses to a local news outlet’s “meet the candidates” questionnaire. Though Mr. Scofield told Committee staff he billed Representative Gutiérrez’s campaign committee separately for some campaign work, he also explained there were a handful of “incidental” campaign tasks “that required little time or effort” for which he volunteered his time.⁷⁷ Among such unpaid tasks, Mr. Scofield and Scofield Communications staff issued meeting invitations and placed follow-up calls to Black and Latino elected officials

⁷⁰ Exhibit 19.

⁷¹ Exhibit 20.

⁷² 18(a) Interview of Representative Gutiérrez.

⁷³ 18(a) Interview of Doug Scofield.

⁷⁴ Exhibit 21.

⁷⁵ 18(a) Interview of Representative Gutiérrez.

⁷⁶ 18(a) Interview of Doug Scofield.

⁷⁷ *Id.*

from Chicago, who convened on at least two occasions to discuss “common priorities and concerns” in anticipation of the 2010 general election.⁷⁸

E. Termination of the Contract

In May 2013, Paul Singer, a reporter with *USA Today*, contacted Representative Gutiérrez’s staff with questions about the Scofield contract. This was not the first time questions about the contract were raised. Representative Gutiérrez’s Communications Director testified that “a year earlier [in 2012], a reporter got in touch with us about Scofield and whether he was under contract with our office.”⁷⁹ The Communications Director recalled a separate press inquiry about the contract in 2010,⁸⁰ and Mr. Scofield recalled previous press calls about the contract, likely in 2007 or 2008.⁸¹

Representative Gutiérrez, for his part, told the Committee he was unaware of these prior press inquiries, and that he first learned that there were questions about the Scofield contract in May 2013. Neither the Communications Director nor Mr. Scofield appear to have discussed the earlier press questions with Representative Gutiérrez at the time they were raised, and Representative Gutiérrez noted that no press stories resulted from the earlier press inquiries.⁸²

On May 30, 2013, Representative Gutiérrez’s Communications Director sent the following response to Mr. Singer:

Doug Scofield, the Congressman’s former Chief of Staff, through the Scofield Company, works with District staff on a wide range of concerns, training them to run the office and handle constituent services, management and everything else they do. He trained me and still works with me on some press issues, especially Chicago-related press and who is who, and helps draft or edit some statements and speeches.⁸³

Representative Gutiérrez’s Chief of Staff helped respond to Mr. Singer’s questions by reviewing the office’s records on the Scofield contract. She found the office’s files “didn’t have much more” than the then-Chief of Staff’s 2003 fax transmission to CHA.⁸⁴ Due to the lack of records, Representative Gutiérrez’s staff sought Mr. Scofield’s assistance in responding to Mr. Singer’s inquiry. Mr. Scofield testified the Chief of Staff told him Representative Gutiérrez’s

⁷⁸ Exhibits 22 and 23; 18(a) Interview of Doug Scofield (“I don’t remember being paid for it.”). Committee staff also found no FEC records reflecting payments from Representative Gutiérrez’s campaign committee to Mr. Scofield or Scofield Communications for work done in 2010 on the “Joint Black Latino Luncheons.” However, FEC records show that Representative Gutiérrez used campaign funds to pay for meals for at least one of those meetings.

⁷⁹ 18(a) Interview of Staffer C.

⁸⁰ *Id.*

⁸¹ 18(a) Interview of Doug Scofield.

⁸² 18(a) Interview of Staffer C; 18(a) Interview of Doug Scofield.

⁸³ Exhibit 24.

⁸⁴ 18(a) Interview of Staffer A.

records did not necessarily indicate that the contract had been approved repeatedly,⁸⁵ and they were not sure “that all of the appropriate procedures had been followed for approval.”⁸⁶

In response to Mr. Singer’s questions, Representative Gutiérrez’s Chief of Staff also consulted with CHA. The Chief of Staff provided CHA with several iterations of the Scofield contract, and told CHA staff the contract had been approved by House Finance every Congress.⁸⁷

On June 4, 2013, Mr. Scofield wrote Representative Gutiérrez’s Chief of Staff and Communications Director with his views on some of the reporter’s allegations, stating:

The case they can make is that I do government work outside the scope of the contact, though if you read the contract it really is quite broad. We are following the language of a repeatedly approved House contract, and the worst that can be said is that I might occasionally do more government, official work than is specifically authorized.⁸⁸

On June 5, 2013, *USA Today* published a report by Mr. Singer on Mr. Scofield’s contract with Representative Gutiérrez, which noted Mr. Scofield had been retained since March 2003 to assist with training and “non-legislative message development.”⁸⁹ Mr. Singer’s article also alleged that “Scofield has represented clients in his communication and lobbying practice, including some for whom Gutiérrez has sought federal aid.”⁹⁰ The article quoted a spokesperson from CHA’s minority staff who “confirmed the contract was approved.”⁹¹ Mr. Singer’s article also stated: “[I]n light of questions raised by *USA Today*, [Representative] Gutiérrez has asked the House Administration Committee to review the contract.”⁹²

On June 12, 2013, Representative Gutiérrez’s Chief of Staff and several CHA staff members met to discuss the contract.⁹³ CHA staff told Committee staff that, at that meeting, they raised various concerns with the contract. For example:

- Based on the Chief of Staff’s description of Mr. Scofield’s duties, CHA staff was concerned Mr. Scofield had performed in a manner equivalent to official staff in some circumstances. For example, CHA staff observed that preparing remarks and press events are core duties of regular staff. Moreover, the type of “training” Mr. Scofield

⁸⁵ 18(a) Interview of Doug Scofield.

⁸⁶ *Id.*

⁸⁷ Exhibit 25; 18(a) Interview of Staffer A (“[T]he exercise of having to regenerate a contract and get it signed to submit to Finance, because they needed a copy of it, was . . . what communicated to me that Finance reviews it [every Congress].”).

⁸⁸ Exhibit 26.

⁸⁹ Paul Singer, “Rep. Gutiérrez pays Chicago lobbyist with tax dollars,” *USA Today*, June 6, 2013, *available at* <https://www.usatoday.com/story/news/politics/2013/06/05/gutierrez-chicago-lobbyist-scofield-staff-congress-democrat/2391499/> (last accessed Mar. 6, 2018).

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ 18(a) Interview of Staffer A.

provided might also be typically provided by a Chief of Staff, Communications Director, or District Director.

- CHA staff was also concerned that the term “non-legislative message development,” which was used in invoices to describe the firm’s monthly work, was undefined by the contract, particularly in light of the potential difficulty in separating matters relating to a Member’s voting decisions (*i.e.* “legislative” activity) from his or her message generally.
- The absence of any written documentation relating to CHA’s review or approval of the contract was also a significant issue.

According to the Chief of Staff, based on these concerns, CHA staff told her they did not recommend the contract continue “as is,” and it should be either revised or cancelled.⁹⁴ Representative Gutiérrez told Committee staff that, until this point, he was unaware of CHA or House Finance having or raising any concerns with him or his staff about the contract.⁹⁵

It is also worth noting that many of the concerns CHA staff expressed in 2013 related to the explicit terms of the Scofield contract – which CHA itself may have reviewed in 2003, and which House Finance received and did not object to over several subsequent congresses.

Following the Chief of Staff’s meeting with CHA staff, she relayed the concerns CHA staff had expressed to Representative Gutiérrez, who decided to promptly terminate the Scofield contract. When Committee staff asked Representative Gutiérrez what he then understood to be the problem with the contract, he said “there could have been instances in which Doug Scofield acted as a consultant and/or an employee outside of the parameters of the contract.”⁹⁶ Representative Gutiérrez told OCE that, at that time, he “saw that there were only two options: Mr. Scofield would have to become a full-time employee of the congressional office or he would have to resign.”⁹⁷ However, Mr. Scofield did not wish to return as a congressional employee. As Representative Gutiérrez explained to Committee staff: “I looked at [Mr. Scofield’s] contract, and as you can see his contract is very broad . . . it was pretty clear that you could blur the lines and if there is a blurring of the lines, you should let somebody go.”⁹⁸ On June 13, 2013, Representative Gutiérrez informed Mr. Scofield that he was cancelling the contract.⁹⁹ Scofield Communications was paid for services rendered through June 13, 2013, at which point Mr. Scofield and his firm did no more work for Representative Gutiérrez.¹⁰⁰

⁹⁴ 18(a) Interview of Staffer A.

⁹⁵ 18(a) Interview of Representative Gutiérrez.

⁹⁶ *Id.*

⁹⁷ Exhibit 2 at 8.

⁹⁸ 18(a) Interview of Representative Gutiérrez.

⁹⁹ Exhibit 27.

¹⁰⁰ See Statement of Disbursements of the House, July 1, 2013 through September 30, 2013, at 903, *available at* https://www.house.gov/sites/default/files/uploads/documents/2013q3_singlevolume.pdf (last accessed Mar. 6, 2018); 18(a) Interview of Doug Scofield.

F. *Potential Lobbying Activities by Scofield Communications*

As previously noted, the June 2013 *USA Today* article included allegations that two Scofield Communications clients – the Greater Chicago Food Depository and the Chicago Botanical Garden – sought federal earmarks from Representative Gutiérrez while Mr. Scofield was under contract with his congressional office.¹⁰¹ Though Mr. Scofield registered as a lobbyist with the State of Illinois soon after forming Scofield Communications in 2003, he has never been registered as a federal lobbyist for any entity.¹⁰² Both Mr. Scofield and Representative Gutiérrez testified that no one from Scofield Communications ever lobbied Representative Gutiérrez or his congressional office.¹⁰³ Representative Gutiérrez also testified that he might have spoken with Mr. Scofield about his work at the Illinois state government level, but he never had a conversation with Mr. Scofield about being a registered lobbyist in Illinois.¹⁰⁴ However, Representative Gutiérrez told OCE that, after the press inquiries regarding Mr. Scofield’s status as a registered state lobbyist, he determined it would be difficult to continue his contract with Mr. Scofield.¹⁰⁵ Representative Gutiérrez also stated it would have been difficult to identify and avoid potential conflicts of interests in the future, even if positions he were to take were wholly independent of Mr. Scofield’s lobbying work.¹⁰⁶

1. *Greater Chicago Food Depository*

Scofield Communications engaged in state-level lobbying on behalf of the Greater Chicago Food Depository (Food Depository), though Mr. Scofield testified that his firm never did any federal lobbying for the organization.¹⁰⁷ While Mr. Scofield was retained under contract, the Food Depository did have a “big federal project . . . building a large building in [Representative Gutiérrez’s] district.”¹⁰⁸ However, Mr. Scofield stated the Food Depository never spoke to him about the project, nor did he discuss the project with Representative Gutiérrez. Mr. Scofield told Committee staff: “I had no role in it.”¹⁰⁹

In March 2004, Representative Gutiérrez co-signed a letter drafted by Representative William Lipinski to Representative James Walsh, Chairman of the Appropriations Subcommittee on VA, HUD and Independent Agencies, in support of a \$2 million earmark for the Food Depository.¹¹⁰ On July 20, 2004, Mr. Scofield emailed Representative Gutiérrez’s then-Chief of Staff and asked: “What do you think is the timing for any decision regarding the appropriation? Thanks, as always. Also, Food Depository success will help me to clear my mind and find a

¹⁰¹ See *supra* Section IV.E.

¹⁰² Exhibit 28; see also 18 (a) Interview of Doug Scofield.

¹⁰³ 18(a) Interview of Doug Scofield; 18(a) Interview of Representative Gutiérrez.

¹⁰⁴ 18(a) Interview of Representative Gutiérrez.

¹⁰⁵ Exhibit 2 at 7.

¹⁰⁶ *Id.*

¹⁰⁷ 18(a) Interview of Doug Scofield.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ Exhibit 29 at 1.

wealthy and handsome husband for you.”¹¹¹ Neither Mr. Scofield’s nor Representative Gutiérrez’s productions to the Committee included any replies to this communication.

When Committee staff asked Mr. Scofield about this email, he said a representative from the Food Depository had called him, because she knew he worked for Representative Gutiérrez, to ask whether he could find out about the status of the appropriation request.¹¹² Representative Gutiérrez’s then-Chief of Staff told Committee staff she did not recall having any discussions with Mr. Scofield about the timing of any appropriation to the Food Depository.¹¹³ The then-Chief of Staff said she did not handle appropriations as part of her duties, but “if [Mr. Scofield] had made a call to the staff about this . . . [she] probably would have been alerted by the staff.”¹¹⁴ She said she “must have had” other communications with Mr. Scofield about the Food Depository, though she did not recall specific conversations on the subject. Nor did she recall anyone else in Representative Gutiérrez’s office having communications with Mr. Scofield about the Food Depository.¹¹⁵

The Food Depository received federal funding as part of a 2005 omnibus appropriations bill. An undated internal memorandum prepared by Representative Gutiérrez’s staff labeled “2005 Appropriations: Member Project Requests” listed appropriations requests made by Representative Gutiérrez that made it into the final bill. The memo included an entry for “VA-HUD Greater Chicago Food Depository,” in the amount of \$539,500, which was listed under the heading “Projects We Supported, But Did Not Take the Lead On.”¹¹⁶

Around the time of the *USA Today* story in June 2013, Mr. Scofield discussed his work for the Food Depository by email with Representative Gutiérrez’s Chief of Staff and Communications Director, when he provided his views on some of the reporter’s allegations. Mr. Scofield wrote:

On the food depository, I would re-emphasize that I simply did not talk to Luis about money. A member of Congress supporting an appropriation for a food bank that feeds hungry people in his district is both routine and admirable, and in this case not caused or initiated by me – it was led by [Representative] Lipinski and [Senator] Durbin.¹¹⁷

In a separate email, Mr. Scofield stated: “I think we can be more emphatic – [Representative Gutiérrez] and Doug Scofield did not have any discussions about funding for the food depository. I strongly believe that is accurate.”¹¹⁸

¹¹¹ Exhibit 30.

¹¹² 18(a) Interview of Doug Scofield.

¹¹³ 18(a) Interview of Former Staffer A.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ Exhibit 31; *see also* Exhibit 32.

¹¹⁷ Exhibit 26.

¹¹⁸ Exhibit 32.

All of the current and former members of Representative Gutiérrez's staff who were interviewed by Committee staff said neither Mr. Scofield nor anyone associated with Scofield Communications ever lobbied them on behalf of the Food Depository.¹¹⁹

2. *Chicago Botanical Gardens*

Mr. Scofield told Committee staff the Chicago Botanical Gardens might have been registered as a lobbying client of Scofield Communications, though he did not advocate for the organization at the federal level.¹²⁰ In March 2010, Representative Gutiérrez sent a letter of support to the Chair and Ranking Member of the House Appropriations Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for a \$620,000 earmark for the Chicago Botanical Gardens.¹²¹ The Committee's investigation revealed no evidence that Mr. Scofield or anyone from Scofield Communications was involved in requesting or otherwise preparing this letter.

By email to Representative Gutiérrez's Chief of Staff and Communications Director, Mr. Scofield commented on the allegations from the *USA Today* story:

I never lobbied for the Chicago Botanic Garden and I don't know anything about an earmark for them and had nothing to do with it. They were briefly a [public relations] client. I never personally did any work for them at all – it would have been other staff members of the company, and it wouldn't have had anything to do with Luis. I had no contact, ever, with anyone on the Congressional staff, or Luis, about the Botanical Garden.¹²²

All the current and former members of Representative Gutiérrez's staff who were interviewed by Committee staff stated that neither Mr. Scofield nor anyone associated with Scofield Communications ever lobbied them on behalf of the Chicago Botanical Gardens.¹²³

3. *National Museum of Puerto Rican Arts and Culture*

Mr. Scofield told Committee staff the National Museum of Puerto Rican Arts and Culture (IPRAC) was a fundraising client, not a lobbying client, of Scofield Communications.¹²⁴ Thus, Scofield Communications helped IPRAC raise money, but did not lobby for state or federal appropriations on the organization's behalf. However, in March 2007, a Scofield Communications employee sent Representative Gutiérrez's then-Chief of Staff a completed federal funding request

¹¹⁹ See, e.g., 18(a) Interview of Staffer A; 18(a) Interview of Staffer C; 18(a) Interview of Former Staffer A; 18(a) Interview of Former Staffer B.

¹²⁰ 18(a) Interview of Doug Scofield.

¹²¹ Exhibit 33.

¹²² Exhibit 26.

¹²³ See, e.g., 18(a) Interview of Staffer A; 18(a) Interview of Staffer C; 18(a) Interview of Former Staffer A; 18(a) Interview of Former Staffer B.

¹²⁴ 18(a) Interview of Doug Scofield.

form for IPRAC, for the Subcommittee on Transportation, Housing and Urban Development, and Related Agencies for FY 2008.¹²⁵ Mr. Scofield's wife, who was then employed by Scofield Communications, later communicated with the then-Chief of Staff on the funding request, in July 2007.¹²⁶ Mr. Scofield's wife told the then-Chief of Staff that she would send her a copy of their previous correspondence on the subject, and noted: "That was the last correspondence there was on this except conversations that took place between Doug and Luis."¹²⁷ Mr. Scofield told Committee staff he was not involved in any work done by Representative Gutiérrez on behalf of IPRAC in the fiscal year 2008 appropriations bill passed by the House.¹²⁸ Representative Gutiérrez also told Committee staff he could not recall having any conversations with Mr. Scofield about IPRAC's funding request.¹²⁹

In July 2007, a Scofield Communications employee emailed Representative Gutiérrez's then-Deputy Chief of Staff and another staff member who handled appropriations matters, attaching a template of letter of support for Senator Durbin to "help secure the funds for IPRAC."¹³⁰ The email noted Mr. Scofield had been "giving his input" on the letter. The Deputy Chief of Staff asked: "Is the objective to ask the Senator to support the House position in the Approps Conference?" The Scofield Communications employee responded: "we [want] him to protect and support the \$150,000 Congressman Gutiérrez has secured in the [H]ouse." Representative Gutiérrez's Deputy Chief of Staff then provided the Scofield Communications employee with some suggestions on the letter.¹³¹ When asked about this email, the then-Deputy Chief of Staff said that he did not recall why an employee of Scofield Communications would have written him about IPRAC.¹³² In their testimony to Committee staff, neither Mr. Scofield nor the former Scofield Communications employee could recall IPRAC requesting federal funding.¹³³

Each of the current and former members of Representative Gutiérrez's staff who were interviewed by Committee staff stated that neither Mr. Scofield nor anyone associated with Scofield Communications ever lobbied them on IPRAC's behalf.¹³⁴

¹²⁵ Exhibit 34.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ 18(a) Interview of Doug Scofield ("Q: Were you involved in any work done by Representative Gutiérrez on behalf of IPRAC in that VA-HUD Appropriations bill? A: No.").

¹²⁹ 18(a) Interview of Representative Gutiérrez.

¹³⁰ Exhibit 35; *see also* 18(a) Interview of Former Staffer B ("The only name that is referenced here is Natalie Angelo, who I think handled appropriations back then.").

¹³¹ Exhibit 35.

¹³² 18(a) Interview of Former Staffer B.

¹³³ 18(a) Interview of Doug Scofield; 18(a) Interview of Former Scofield Communications Employee.

¹³⁴ *See, e.g.*, 18(a) Interview of Staffer A; 18(a) Interview of Staffer C; 18(a) Interview of Former Staffer A; 18(a) Interview of Former Staffer B.

V. FINDINGS

A. *Unauthorized Use of the Members' Representational Allowance*

Federal appropriations law, which states “[a]ppropriations shall be applied only to the objects for which the appropriations were made,” restricts use of the MRA to only those purposes and reimbursements authorized by federal law or CHA regulations governing the reimbursement of expenses from a Member’s MRA.¹³⁵ The *Members’ Handbook*, which details those regulations, says Member offices are authorized to retain contractors, not consultants. The *Member’s Handbook* in effect at the time the Scofield Communications contract was in place also states Members, using MRA funds, “may contract with firms or individuals only for general, non-legislative, office services . . . for a specific, limited period not to exceed the Member’s term.”¹³⁶

The *Members’ Handbook* advises Members to consult the CHA when entering into agreements with contractors. The Committee found Representative Gutiérrez took appropriate steps to get approval for the initial contract with Scofield Communications. While the Committee’s investigation did not reveal conclusive evidence regarding CHA approval of the Scofield Communications contract, there is substantial evidence that CHA and the House Finance office either expressly approved Representative Gutiérrez’s contract with Scofield Communications, or at a minimum raised no objection to that contract from 2003 to 2013, until the press inquiries that eventually prompted Representative Gutiérrez to terminate the contract. Once Representative Gutiérrez became aware of CHA’s concerns over the contract in 2013, he also took appropriate steps to address those concerns.

It could be argued that some of the work the contract expressly authorized Mr. Scofield to do was beyond the scope of what CHA’s *Members’ Handbook* anticipated for contractors. However, the Committee did not find Representative Gutiérrez at fault for permitting a contractor to perform work consistent with a contract that CHA – the entity that authors the *Members’ Handbook* – appears to have reviewed and not objected to. Moreover, CHA has subsequently taken steps to review its regulations governing use of the MRA and related oversight processes.¹³⁷

A significant portion of Mr. Scofield’s work from 2003 to 2013 also accorded with the contract’s terms and with the guidance in the *Members’ Handbook*. Mr. Scofield regularly edited remarks prepared by official staff, assisted in responding to press inquiries, drafted press statements and speeches, organized staff retreats, and conducted training – all activities specified in the contract’s scope of work.

¹³⁵ 31 U.S.C. § 1301(a).

¹³⁶ Exhibit 1 at 13.

¹³⁷ In 2015, CHA publicly announced the creation of a working group “to review current House regulations and explore ways to strengthen the regulations governing official expenses, as well as ways to enhance the training and educational opportunities available to assist each office with compliance.” Comm. on House Admin., “Committee Members to Review House Regulations Governing Official Expenses,” Mar. 27, 2015, *available at* <https://cha.house.gov/press-release/committee-members-review-house-regulations-governing-official-expenses> (last accessed Mar. 6, 2018).

On the other hand, to the extent Representative Gutiérrez used MRA funds to compensate Mr. Scofield for performing services that were both outside the scope of the contract that CHA reviewed and not authorized by the regulations detailed in the *Members' Handbook*, such disbursements were not permissible.¹³⁸ And while a significant portion of the work Mr. Scofield and his firm performed for Representative Gutiérrez's office was within the contract's broad terms – and fit the contract's description of “non-legislative, general office services” – some of the services provided appeared to be “legislative” in nature, or otherwise exceeded both the contract's scope and *Members' Handbook* guidelines governing the work contractors may perform for a congressional office. The phrases “non-legislative” and “general office services” are both important to this determination.

The Committee is unaware of a specific definition for a “legislative” task in this context, either in the CHA regulations or in the Committee's guidance. Nor does the contract between Representative Gutiérrez and Scofield Communications supply a definition. However, it is reasonable to conclude that a contractor who is retained to perform “non-legislative” work should not be actively involved in a Member's decisions regarding whether, when, or how to introduce legislation. The phrase “general office services” is also important, as it modifies “non-legislative” in both the Scofield contract and the CHA guidelines regarding retention of contractors by personal offices. The *Members' Handbook* does not define “general office services,” but it does provide some representative examples: “equipment maintenance, systems integration, data entry, staff training, photography, custodial services.”¹³⁹ Notably, none of these tasks are even remotely related to the process of crafting and passing legislation.

Generally speaking, both Representative Gutiérrez and Mr. Scofield acknowledged that some of Mr. Scofield's work had at least some “legislative component.” When discussing his work generally, Mr. Scofield told Committee staff: “Did they ask me to do some things on the

¹³⁸ Neither Representative Gutiérrez nor Mr. Scofield has asserted that, while Scofield Communications was a contractor for Representative Gutiérrez's office, Mr. Scofield performed any official work for the office in an unpaid, volunteer capacity. Thus, the Committee assumed Scofield Communications was paid, using MRA funds, for all of the official work it performed for Representative Gutiérrez's office. If Mr. Scofield or Scofield Communications had performed work for the official office in a volunteer capacity, that would likely violate House Rule, XXIV, clause 1(a), which prohibits the maintenance of an “unofficial office account.” See *Ethics Manual* at 284 (“[I]n addition to money, the prohibition on unofficial office accounts proscribes the private, in-kind contribution of goods or services for official purposes.”); see also *id.* at 288 (“A Member or House office may accept the temporary services of a volunteer, provided the Member or office has a clearly defined program to assure that: (1) The voluntary service is of significant educational benefit to the participant; and (2) such voluntary assistance does not supplant the normal and regular duties of paid employees. In this regard, limitations should be imposed on . . . the duration of services any one volunteer may provide.”). Indeed, the Committee has previously found that permitting a former Chief of Staff to volunteer with an office, in a capacity that included routine political advice to the Member, violated the prohibition on unofficial accounts. See House Comm. on Standards of Official Conduct, *In the Matter of Rep. E.G. “Bud” Shuster*, H. Rep. 106-979, 106th Cong., 2d Sess. at 44-51 (2000).

¹³⁹ Exhibit 1 at 13. The *Members' Handbook*, which was last updated on February 27, 2018, currently includes a revised contractor rule stating that general office services should be “outside core office functions.”

continuum that are more legislative than others? I suppose they did.”¹⁴⁰ Two incidents in particular illustrate the accuracy of this statement.

First, in September 2009, Representative Gutiérrez’s then-Legislative Director emailed Mr. Scofield to tell him she “just sat down with the Congressman to discuss how to keep the pressure on the immigration debate, to keep things moving forward.”¹⁴¹ The then-Legislative Director clarified this “was not a conversation about bill content (although I am readying a bill), but about strategy: what kind of bill, how to roll it out and with whom.”¹⁴² The then-Legislative Director explained they “talked about a number of considerations with regard to strategy,” and said “the boss asked me to . . . get your opinion on them.”¹⁴³ This request was repeated in January 2013, when Representative Gutiérrez sought Mr. Scofield’s “guidance on some key decisions” with respect to various immigration bills being developed in the House.¹⁴⁴ At Representative Gutiérrez’s request, the then-Legislative Director prepared a memorandum “for Scofield in particular” outlining legislative developments and strategic considerations, in preparation for a discussion as to what particular bill(s) Representative Gutiérrez should sponsor or otherwise support.¹⁴⁵

Moreover, as previously discussed, on at least one occasion, Representative Gutiérrez’s staff directly consulted Mr. Scofield for his input on a bill’s substantive language.¹⁴⁶ While it is unclear whether or how Mr. Scofield responded, there is no evidence in the record that Mr. Scofield ever declined to answer any question the official staff directed to him, or refused any request to do any particular task. Nor is there any evidence Mr. Scofield ever raised concerns that anything he was asked to do was beyond the scope of Scofield Communications’ contract with Representative Gutiérrez. Moreover, the mere fact that a member of Representative Gutiérrez’s staff would ask Mr. Scofield to weigh in on the language of a bill she was drafting for the Congressman suggests Representative Gutiérrez did not set, or communicate to staff, clear limits on Mr. Scofield’s services to the office.

Mr. Scofield told Committee staff he understood the contract to broadly permit his work on communications-related tasks for Representative Gutiérrez, and that any work he may have performed relating to legislation was “strategic messaging” of Representative Gutiérrez’s positions, and thus a communications function. When questioned about documents that appeared to show his involvement advising Representative Gutiérrez on strategic decisions regarding whether, when, and how to introduce legislation, Mr. Scofield stated “virtually everything that comes through a congressional office has a legislative component,” and that he only considered those things a “legislative assistant does day-to-day, attending committee hearings, tracking

¹⁴⁰ 18(a) Interview of Doug Scofield.

¹⁴¹ Exhibit 11 at 2.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ Exhibit 15.

¹⁴⁵ *Id.*

¹⁴⁶ *See supra* Section IV.D (discussing Exhibit 17).

legislation, writing an analysis of a bill” as the kind of “legislative” tasks he could not perform.¹⁴⁷ Yet there is no basis for concluding that “legislative” work is limited to those tasks typically done by a legislative assistant. To start, the examples of permissible contractor services in the *Member’s Handbook* involve no “legislative component” whatsoever,¹⁴⁸ which suggests Mr. Scofield’s interpretation of where the line falls is overly restrictive. Further, while it is true that Mr. Scofield’s input on decisions about whether, when, and how to introduce legislation may have had a messaging-related component, they were also integral to the legislative process. Indeed, even some of Mr. Scofield’s communications work was deeply intertwined in the legislative process, such as when he drafted, edited and commented on speeches Representative Gutiérrez gave on the House Floor, some of which related to legislation.¹⁴⁹

Notwithstanding any ambiguities over whether some of the services Mr. Scofield provided under the contract were more “legislative” in nature, Congressman Gutiérrez has argued that the contract was broad and, more importantly, repeatedly “approved” by CHA.¹⁵⁰ Representative Gutiérrez has also asserted that neither CHA nor the House Finance Office, when it received new copies of the Scofield contract at the beginning of each Congress, objected to the descriptions in the scope of work Mr. Scofield would perform.¹⁵¹ Thus, Representative Gutiérrez asserts he reasonably relied on such “approval” to conclude that the Scofield contract, as well its descriptions of the tasks Mr. Scofield would perform, were permissible and compliant with relevant rules and regulations. To be clear, the Committee did not fault Representative Gutiérrez for allowing Mr. Scofield and his firm to do the work specified in the contract, even if the Committee itself would have raised questions about the breadth of the contract in the first instance.

However, even if CHA approved the Scofield contract, there is no indication CHA monitored or was informed of the work Mr. Scofield was *actually doing* for Representative Gutiérrez’s office. To the extent Mr. Scofield did work that exceeded the scope of the contract – however broad it may have been – CHA’s approval of the contract’s terms is no defense. Further, Mr. Scofield acknowledged the possibility that he did more official work for Representative Gutiérrez than he was authorized to perform under the contract, noting in response to the inquiries from *USA Today* that “the worst that can be said is that I might occasionally do more government, official work than is specifically authorized.”¹⁵²

There is also substantial evidence that, while the contract described Scofield Communications as an “independent contractor,” Representative Gutiérrez and his office treated Mr. Scofield as equivalent to official staff. As a part-time contractor, Mr. Scofield’s annual compensation was at times equal to, if not greater than, the salary of a full-time communications

¹⁴⁷ 18(a) Interview of Doug Scofield.

¹⁴⁸ See Exhibit 1 at 5.

¹⁴⁹ *Supra* note 49.

¹⁵⁰ 18(a) Interview of Representative Gutiérrez.

¹⁵¹ *Id.*

¹⁵² Exhibit 26.

staffer in the congressional office.¹⁵³ In his submissions to the Committee, Representative Gutiérrez asserted Mr. Scofield's role in his office was distinct from that of official staff because:

Mr. Scofield had no office space or office hours in either the Washington, D.C., or district offices; he did not use House equipment or resources to complete tasks associated with his contract; he did not utilize a House email address; he had no specific job responsibilities, nor did he hire, fire, direct or supervise any member of the official staff. Mr. Scofield generally received assignments for specific tasks, as provided by the contract, primarily from Representative Gutiérrez, his chief of staff or his communications director.¹⁵⁴

While Mr. Scofield may not have had a desk in Representative Gutiérrez's congressional offices, he appears to have spent considerable time in a district office in 2012, in order to fill a "vacuum in leadership" following a staff demotion.¹⁵⁵ And while Mr. Scofield may not have hired or fired any congressional employees, he was asked by Representative Gutiérrez on one occasion to "evaluate district operations and report changes and improvements," prepare staff evaluations, and "make recommendations as to [staff] conditioned employment."¹⁵⁶

Further, Representative Gutiérrez described Mr. Scofield as "so tightly knit to our staff," that he was consulted "[w]henever he was needed" and was expected to "be there" whenever the Communications Director was out of the office, so "someone of his stature and someone of his competence [would] be in a position to answer questions to the media and the press . . ."¹⁵⁷ Representative Gutiérrez told OCE that, given the breadth of the "Scope of Work" in the Scofield contract, "it was pretty clear that you could blur the lines" between what Mr. Scofield could and could not do. Yet Representative Gutiérrez's own statements, actions, and failure to supervise both his contractor and his official staff contributed to this blurring. The difficulty began with Representative Gutiérrez's 2003 statement to his then-Chief of Staff that by retaining Scofield Communications, the office would have Mr. Scofield "back on staff." Given this statement and belief, it is not surprising Representative Gutiérrez's official staff would not easily distinguish between Mr. Scofield's role as a contractor and his former role as Chief of Staff. Representative Gutiérrez also failed to clearly define, and communicate to his staff, the boundaries of Mr. Scofield's role, which likely contributed to his performance of work that exceeded the scope of his contract, and the staff's practice of consulting Mr. Scofield on matters outside the contract's scope.

¹⁵³ Under the contract, Scofield Communications was paid a monthly fee of \$5,500 from March to June 2003, which was reduced to \$4,500 month beginning in July 1, 2003. *See* Exhibit 6. The firm was apparently paid at that same rate through 2008 and 2009. *See* Exhibit 36. By comparison, Representative Gutiérrez's Communications Director was paid an average of \$4,631.94 per month in 2004; in 2008, his Press Secretary was paid an average of \$4,408.65 per month. Meanwhile, the firm's monthly fee rose to \$6,000 per month in January 2013. *See* Exhibit 7. Current and former members of the official staff explained this parity in pay – despite Mr. Scofield's part-time, contractor status – by saying that Mr. Scofield was highly trained and valued within the office for his knowledge of Representative Gutiérrez and his communications style. *See, e.g.*, 18(a) Interview of Former Staffer A ("[M]essage is key. And Doug, for better or for worse, mastered that so brilliantly, that he was worth it.").

¹⁵⁴ Representative Gutiérrez Submission (July 18, 2014) at 2.

¹⁵⁵ 18(a) Interview of Doug Scofield.

¹⁵⁶ Exhibit 21.

¹⁵⁷ 18(a) Interview of Representative Gutiérrez.

Ultimately, the Committee found clear evidence that Representative Gutiérrez directly asked Mr. Scofield on various occasions to perform work that was “legislative” in nature, beyond the scope of the contract Representative Gutiérrez personally signed with Scofield Communications, or otherwise impermissible for contractors to provide to a congressional office. In addition, it appeared Representative Gutiérrez made no effort to communicate to his staff any limits on the scope of work which staff could ask Mr. Scofield to do. The incident where a legislative assistant asked Mr. Scofield for guidance on specific language to insert into a bill illustrated the danger of such a “hands-off” approach to retaining a contractor, especially one who had previously served as the office’s Chief of Staff.

The Committee accepted Representative Gutiérrez’s assertion that he did not, until allegations surfaced in the press in 2013, “understand the extraordinary nature” of the services Mr. Scofield was asked to perform as a contractor, or the House rules and CHA regulations governing such services.¹⁵⁸ However, as previously discussed, it appears the press raised questions about Mr. Scofield’s work with Representative Gutiérrez’s office on several occasions prior to the *USA Today* report in 2013, going back as early as 2007.¹⁵⁹ The precise nature of these inquiries is not clear, and it does not appear the press published any reports about Mr. Scofield’s role until 2013. However, at a minimum, these inquiries could have prompted Representative Gutiérrez’s office to re-examine the Scofield contract and consider whether all of Mr. Scofield’s work was consistent with the contract’s terms and CHA’s guidance. Even before and aside from any press inquiries about Mr. Scofield’s role, Representative Gutiérrez should have known the rules and regulations governing his use of the MRA,¹⁶⁰ and should have better supervised Mr. Scofield’s work performance to make sure it accorded with both those rules and the contract’s terms.

To his credit, when *USA Today* published its report in 2013, Representative Gutiérrez promptly directed his Chief of Staff to consult with CHA staff. When CHA staff informed him the contract would have to be revised or canceled, Representative Gutiérrez immediately terminated the contract. Further, Representative Gutiérrez told the Committee he has gained a greater understanding of how and why Mr. Scofield’s role with his office was in some ways problematic. As Representative Gutiérrez explained:

I have come to the understanding [of] what is a contractor . . . House Administration isn’t going to come to my office every 6 months and say, hey, by the way [Mr. Scofield] didn’t do this, right? We have to do that internally . . . And so – would I have done it differently?

¹⁵⁸ *Id.*

¹⁵⁹ *Supra* Section IV.E.

¹⁶⁰ See House Comm. on Ethics, *In the Matter of Allegations Relating to Representative Ed Whitfield*, H. Rept. 114-387, 104th Cong. 2nd Sess. 44 (2016) (hereinafter *Whitfield*) (citing House Comm. on Standards of Official Conduct, *In the Matter of Representative Richard Stallings*, H. Rept. 100-382, 100th Cong. 1st Sess. 5 (1987) (hereinafter *Stallings*) (noting that the Committee has historically “refused to accept claims of mitigation that ‘would effectively result in the condonation of improper action based upon a defense of ignorance of House Rules, stating that ‘[s]uch an approach is clearly untenable on its face.’”)).

Yeah, I would have done it really, really differently . . . [and] I know ignorance is not an excuse¹⁶¹

Likewise, when Committee staff asked Representative Gutiérrez about instances where he directed staff to consult with Mr. Scofield about the kind of immigration bills he should introduce, how he should position the bills to achieve passage, and who he should work with on the bills, he said: “I get the legislative stuff, and I get where the questions are coming from, that is why [Mr. Scofield] was let go.”¹⁶²

The Committee found no reason to believe that Representative Gutiérrez or his office intentionally misused the MRA in this case. Nor did Representative Gutiérrez personally benefit from any misuse of MRA funds. The Committee also accepted Representative Gutiérrez’s subjective belief that the terms of the contract with Scofield Communications – however broad – were permissible, given his understanding that the contract was submitted for CHA’s review, and that the House Finance Office continually authorized payments of Scofield Communications invoices from the contract’s inception until its termination in 2013. Yet the evidence is clear that some portion of the work for which Representative Gutiérrez used MRA funds to pay Scofield Communications exceeded the scope of the contract, as well as CHA rules defining those tasks that contractors retained by congressional offices may perform. Any use of official funds to pay Scofield Communications for such work violated House rules and CHA regulations restricting the MRA to approved uses.¹⁶³

As the *Members’ Handbook* states, “[e]ach Member is personally responsible for the payments of any official and representational expenses incurred that exceed the provided MRA or that are incurred but are not reimbursable under these regulations.”¹⁶⁴ Consistent with this guidance, where Members have used official funds for impermissible purposes, the Committee has regularly directed them to repay any misspent funds.¹⁶⁵ This requirement has most frequently arisen in circumstances where official funds were used for a Member’s personal benefit or to

¹⁶¹ 18(a) Interview of Representative Gutiérrez.

¹⁶² *Id.*; see also *id.* (describing his decision in 2013 to terminate Mr. Scofield’s contract, Representative Gutiérrez stated: “[A]s I looked at his contract . . . it was pretty clear that you could blur the lines.”).

¹⁶³ Regarding Mr. Scofield’s assistance on “incidental” campaign-related matters, the lack of detailed invoices or sufficient division between the performance of official work and campaign work could present a problem of appearances: members of the public or individuals unfamiliar with Mr. Scofield’s practices might speculate whether Mr. Scofield was paid to do campaign work under the general retainer agreement. However, the Committee found no evidence that Mr. Scofield or anyone at Scofield Communications was paid for campaign work with MRA funds.

¹⁶⁴ *Members’ Handbook* at 2; see also *Ethics Manual* at 323 (“Members may be personally liable for misspent funds or expenditures exceeding the MRA.”).

¹⁶⁵ See, e.g., Comm. on Standards of Official Conduct, *In the Matter of Representative Charles C. Diggs*, H. Rept. 96-351, 96th Cong. 1st Sess. (1979) (Member was required to repay House \$40,031.66 for the “personal benefit he received from his misconduct” in giving his office staff raises and requiring them to pay certain of his personal expenses out of those raises); Comm. on Standards of Official Conduct, *In the Matter of Adam Clayton Powell*, H. Rept. 90-27, 90th Cong. 1st Sess. (1967) (Member was censured and fined \$40,000 for various acts, including misappropriating public funds for personal travel, and for paying his wife a salary though she performed no official duties; the Committee noted that the fine would “offset any civil liability of Mr. Powell to the United States of America with respect to” the allegations.).

benefit their campaign, which is not the case here. However, the Committee has also made clear that a Member is responsible to repay MRA funds used for impermissible purposes, even where neither the Member nor the Member's campaign benefitted from the use of official funds. Thus, in *The Matter of Representative Mary Rose Oakar*, the Committee concluded that Representative Oakar's payment of salary to an individual residing and working in New York directly violated House and statutory requirements that all individuals paid from the Clerk Hire Allowance were required to perform their official duties either in Washington, D.C., or in the state or the district represented by the Member.¹⁶⁶ Though the Committee took no further action in the matter – in part because Representative Oakar admitted fault and had already reimbursed the U.S. Treasury for any impermissible disbursements – it stated that the Member, “as the individual who authorized the erroneous salary disbursements, bore financial responsibility for all payments improperly made.”¹⁶⁷

In some cases, however, the Committee has sanctioned Members for unauthorized uses of official funds, but has not required them to repay such funds. In *The Matter of Representative Austin J. Murphy*, the Committee recommended, and the House voted to issue, a reprimand to Representative Murphy for various violations of law and House rules, including permitting a private law firm, over a nine year period, to use office equipment, furniture, supplies, and a telephone account paid for with official funds.¹⁶⁸ In resolving the matter, it appears the Committee did not discuss the possibility of requiring Representative Murphy to reimburse the U.S. Treasury for any impermissible disbursements from the MRA, nor did it cite the CHA regulation providing that a Member is personally responsible for such disbursements. Rather, the Committee noted Representative Murphy “either disclaimed his knowledge or approval of [the improper use of official resources], or asserted that such instances were *de minimis*,” and stated “precise quantification of the value of diverted resources is not possible.”¹⁶⁹

In this case, Representative Gutiérrez cannot claim he was unaware Mr. Scofield was asked to do work that exceeded the scope of his contract because, in several instances, it was Representative Gutiérrez who asked that the work be done. Thus, while Representative Gutiérrez may not have been aware of CHA's guidance on the work a contractor may do,¹⁷⁰ and may have forgotten how the contracts he repeatedly signed defined those limits, he certainly knew Mr.

¹⁶⁶ The Clerk Hire Allowance has since been merged into the MRA. See Legislative Branch Appropriations Act, Pub. L. 110-161, Division H, Title I - House of Representatives - Members' Representational Allowances Including Clerk Hire, Official Expenses of Members, and Official Mail (2008).

¹⁶⁷ In so concluding, the Committee noted “the individual who authorized the disbursements should be held responsible for such actions since the recipient is not in a position to set into motion the administrative process resulting in payment.” Comm. on Standards of Official Conduct, *Summary of Activities, One Hundredth Congress*, H. Rept. 100-1125, 100th Cong. 2nd Sess. 7 (1989).

¹⁶⁸ Comm. on Standards of Official Conduct, *In the Matter of Representative Austin J. Murphy*, H. Rept. 100-485, 100th Cong., 1st Sess. 5 (1987) (hereinafter *Murphy*).

¹⁶⁹ *Id.* at 4.

¹⁷⁰ As the Committee has long made clear, ignorance of the law, rules, and other standards of conduct is not a defense or excuse. See *supra* n.160.

Scofield was told to do “legislative” work, and that Mr. Scofield did such work.¹⁷¹ Also unlike the *Murphy* matter, even though Representative Gutiérrez asserts he did not learn of press inquiries about Mr. Scofield’s contract until May 2013, his office had fielded questions about the contract several times, starting years before the *USA Today* article that ultimately caused him to cancel the contract. Finally, although the amount of impermissible work may have been minimal, relative to the vast majority of the work Mr. Scofield appropriately performed, it was not “*de minimis*,” because it was not negligible or inconsequential, given Mr. Scofield’s billing rate and the significance of some of the impermissible requests to Representative Gutiérrez’s legislative goals and official work.¹⁷²

As in the matter of Representative Murphy, in this case “precise quantification of the value of diverted resources is not possible.”¹⁷³ Scofield Communications charged Representative Gutiérrez’s office a flat monthly fee for its services, over a span of over ten years, and did not track or itemize the value of its work on discrete tasks for the office. As a result, it is difficult to attribute individualized sums or hours worked by Mr. Scofield to specific tasks. Nor has Representative Gutiérrez proposed any method for calculating the value of any MRA funds that may have been improperly spent to compensate Scofield Communications for services provided under the contract.

However, the Committee believes Members should be required to reimburse the U.S. Treasury for impermissible disbursements from the MRA even where the exact amount of such disbursements cannot be determined.¹⁷⁴ This is particularly true where the Member was aware of, and in fact directed, the impermissible conduct. As previously discussed, the *Murphy* matter, which dealt with circumstances where the misspent funds were arguably *de minimis*, is

¹⁷¹ Representative Gutiérrez also knew, or should have known, there was *some* limit on Mr. Scofield’s relationship with the official office. When Representative Gutiérrez signed the contract with Scofield Communications, he told his then-Chief of Staff something to the effect of “we’d have Doug back on staff.” See Exhibit 2 at 3. But there is no plausible reading of CHA’s guidance on hiring contractors that would allow a Member to hire a contractor to do everything an official staffer would do. The Committee does not credit readings of the rules that have no reasonable basis. See, e.g., Comm. on Ethics, *In the Matter of Allegations Relating to Representative Don Young*, H. Rept. 113-487, 113th Cong. 2d Sess. 69 (2014) (hereinafter *Young*) (Member’s receipt of travel “based on an exception to the gift rule that does not exist” was “not a reasonable difference of opinion on the nature of the rules,” but rather “at best, a grievous error in interpretation.”). To the extent Representative Gutiérrez knew or should have known that any reasonable reading of the rules required him to limit Mr. Scofield’s work for the office in some way, he should have been more mindful of, and attentive to, what those limits were and how he could avoid exceeding them.

¹⁷² See, e.g., Black’s Law Dict. (10th Ed.) (defining *de minimis* as “trifling; negligible”); see also *Ethics Manual* at 96 (lobbyist’s involvement in planning, organizing, requesting, or arranging a one-day event trip is permissible under House Rule 25, clause 5(c)(2) only if it is *de minimis*, meaning “the involvement of a lobbyist . . . in connection with the trip must be ‘only negligible or otherwise inconsequential in terms of time and expense to the overall planning purpose of the trip.’”).

¹⁷³ See *Murphy* at 4.

¹⁷⁴ In this case, the formula for determining the monetary value of any impermissible work is relatively straightforward: the Committee calculates the proportion of any month’s billable work that consisted of impermissible tasks and applies that same proportion to the MRA funds disbursed to Scofield Communications. It is the key input to this formula – the amount of time that Mr. Scofield dedicated to impermissible work – that the Committee cannot precisely determine.

distinguishable. In any case, a requirement of “precise quantification” of amounts a Member must repay is not consistent with the Committee’s more recent practice and precedent. For example, in *The Matter of the Investigation into Officially Connected Travel of House Members to Attend the Carib News Foundation Multi-National Business Conferences in 2007 and 2008*, the Committee required Members to repay the value of travel they received from a private sponsor because the sponsor misled the Members and the Committee about the sources of funds for the travel.¹⁷⁵ In calculating the amounts Members were required to repay, the Investigative Subcommittee (ISC) was unable to determine the precise value of the plane tickets Members received, because they were provided to the trip sponsor, and then to the Members, at a “promotional” rate, but the airline could not determine what “non-promotional” tickets, purchased at the same time, would have cost.¹⁷⁶ Instead, the airline proffered the cost of a ticket purchased on the days the travel occurred.¹⁷⁷ Faced with an inability to calculate the precise value of the tickets, the Committee required Members to repay the cost of a same-day ticket,¹⁷⁸ even though that price likely exceeded the actual cost of the Members’ tickets. In this and other recent matters, the Committee has directed Members to make repayments even where “estimating [a] value is imprecise,”¹⁷⁹ or determining a valuation “is relatively complicated.”¹⁸⁰

Although the Committee could not determine the exact proportion of the payments to Scofield Communication attributable to impermissible work, the Committee has attempted to calculate a reasonable reimbursement amount. In so doing, the Committee placed considerable weight on the fact that, while Mr. Scofield occasionally performed work for Representative Gutiérrez’s office that was either “legislative” in nature or otherwise exceeded the Scope of Work outlined in the contract, the overwhelming majority of the work Mr. Scofield performed from 2003 to 2013 clearly accorded with the contract’s terms. Further, it appears the bulk of Mr. Scofield’s “legislative” work for Representative Gutiérrez began in the fall of 2007 and continued to the contract’s termination in June 2013, a period when Representative Gutiérrez was heavily involved in leading the effort for legislative fixes to the immigration system. Thus, having reviewed this evidence in light of the totality of the circumstances, the Committee believes a reimbursement of \$9,700, or approximately three percent of the total amounts paid from Representative Gutiérrez’s MRA to Scofield Communications from September 2007 until the contract’s termination in June 2013, would be appropriate to compensate the U.S. Treasury for any impermissible disbursements of MRA funds to Scofield Communications.¹⁸¹

¹⁷⁵ Comm. on Standards of Official Conduct, *In the Matter of the Investigation into Officially Connected Travel of House Members to Attend the Carib News Foundation Multi-National Business Conferences in 2007 and 2008*, H. Rept. 111-422, 111th Cong., 2d. Sess. 2-3 (2010).

¹⁷⁶ *Id.* at n.387.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* at 75.

¹⁷⁹ See *Young* at 62 (ISC could not determine the precise value of lodging and hunting services given to a Member because the host “did not prepare an invoice for the trip” and it was unclear what hunting services the Member took advantage of. Accordingly, the ISC valued the hunting services based on the least expensive option available).

¹⁸⁰ *Id.* at 63 (ISC could not determine the actual value of food eaten by the Member, so it valued meals based on the maximum *per diem* rate for travel in the geographic area where the meals were taken).

¹⁸¹ The Committee’s calculation required some estimation, given the lack of detailed evidence as to the work Mr. Scofield performed over the contract’s duration. The Scofield Company never provided Representative Gutiérrez

Having considered the foregoing record and applied the relevant standards of conduct and related precedent, the Committee also concluded Representative Gutiérrez’s conduct in this matter warrants a public reproof. Although the Committee accepts Representative Gutiérrez’s assertion that he did not intend to mispend his MRA, he did directly ask Mr. Scofield, on several occasions to perform work that was “legislative” in nature, or otherwise exceeded the scope of the Scofield contract and CHA regulations. At a minimum, Representative Gutiérrez inadequately supervised his staff’s interactions with Mr. Scofield, and the work Mr. Scofield was asked to do, to ensure it accorded with both the contract’s terms and CHA’s regulations. These oversights resulted in an improper use of MRA funds to compensate Mr. Scofield for work he could not perform as a contractor, but which was nonetheless provided to Representative Gutiérrez’s congressional office over a ten-year period. Where oversights like these result in such repeated, substantial, non-technical violations of House rules, Committee precedent holds that a reproof is appropriate.¹⁸²

B. House Rule XXIII, clauses 1 and 2

As stated in previous reports, the Committee observes two basic principles when applying the first two clauses of the Code of Conduct. First, Members must at all times act in a manner that reflects creditably upon the House. Second, the Committee has noted that the Code of Conduct and other standards of conduct governing the ethical behavior of the House community are not criminal statutes to be construed strictly, but rather – under clause 2 of House Rule XXIII – must be read to prohibit violations not only of the letter of the rules, but of the spirit of the rules. Ethical rules governing the conduct of Members were created to assure the public of “the importance of

with invoices itemizing work on specific tasks or subjects; nor did Mr. Scofield or Representative Gutiérrez’s office maintain any time-keeping records for work performed or services billed. However, documents and emails produced to the Committee illustrate Mr. Scofield’s involvement in specific tasks that were clearly legislative in nature or related to core office functions such as office management, as early as fall of 2007. Roughly three percent of the documents in the Committee’s possession were identified as pertaining to either impermissible legislative or office management work by Mr. Scofield from 2007 until the contract’s termination. Thus, the Committee determined that three percent of the fees charged by Mr. Scofield from September 2007 through June 2013, or \$9,700, represented a conservative yet reasonable estimate of the share of his billings that should not have been paid using MRA funds. This estimated repayment amount compares to a total of \$590,000 that Representative Gutiérrez paid to Mr. Scofield using MRA funds across the contract’s ten-year span. The Committee notes that this methodology likely omits some instances of impermissible legislative work performed by Mr. Scofield: witnesses testified that Mr. Scofield had regular calls and meetings with Representative Gutiérrez and staff, the content of which would not necessarily be captured in the available documents.

¹⁸² See *Whitfield* at 44 (citing *In the Matter of Allegations Relating to Representative Phil Gingrey*, H. Rept. 113-664, 113th Cong. 2d Sess. 25 (2014) (hereinafter *Gingrey*) (finding violations of House Rules, and issuing a reproof, even though “the Committee credited Representative Gingrey’s assertion that he believed his actions were consistent with House Rules”)); see also *In the Matter of Allegations Relating to Representative Shelley Berkley*, H. Rept. 112-716, 112th Cong. 2d Sess. 10 (2012) (hereinafter *Berkley*) (reproof was appropriate even though “[t]he ISC found that Representative Berkley mistakenly believed the rules governing what assistance her office could provide to her husband’s practice required only that they treat him in the same manner by which they treated any other constituent”); *Stallings* at 5 (Committee issued a public reproof where the Member was unaware of the applicable House Rule and did not intend to violate it).

the precedents of decorum and consideration that have evolved in the House over the years.”¹⁸³ The standard “provide[s] the House with 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.”¹⁸⁴ The practical effect of Clause 2 is to allow the committee to construe the ethical rules broadly, and prohibit Members from doing indirectly what they would be barred from doing directly. The Ethics Manual states that “a narrow technical reading of a House Rule should not overcome its ‘spirit’ and the intent of the House in adopting that and other rules of conduct.”¹⁸⁵

The Committee, after analyzing the conduct at issue in this matter under these standards, found Representative Gutiérrez violated House Rule XXIII clauses 1 and 2, by paying Mr. Scofield as a contractor when he occasionally functioned as an official employee, and using MRA funds to pay Scofield Communications for some work that exceeded the scope of the contract. As noted previously, the Committee credits Representative Gutiérrez’s assertion that any impermissible disbursements from his MRA to Mr. Scofield were not the result of a deliberate intent to violate House Rules. Yet Representative Gutiérrez’s inattention to the rules and regulations governing the retention of contractors, and inadequate supervision of both his own staff and Mr. Scofield’s work, resulted in the use of MRA funds to compensate Mr. Scofield for an array of tasks that he could not permissibly perform as a contractor.¹⁸⁶

The Committee explained its approach to matters such as this one in a recent case, and it has followed this approach in many matters, over many years:

[T]here is no evidence that [the Member] actually intended to receive inappropriate gifts, or purposefully violated the rules . . . But there are a range of mindsets between completely innocent and unforgivably corrupt. Somewhere along that span sit Members who fail to exercise care that a reasonable Member would exercise in similar circumstances to ensure compliance with the Code of Conduct. And in cases where a Member fails to exercise that care – where they ‘should have known’ . . . or they ‘lack[ed] . . . discernible policies’ for compliance . . . the Committee has consistently reprovved the offending Members.¹⁸⁷

Thus, consistent with its precedent, the Committee has decided to publicly reprove Representative Gutiérrez.¹⁸⁸

¹⁸³ House Comm. on Standards of Official Conduct, *Report Under the Authority of H. Res 418*, H. Rept. 90-1176, 90th Cong. 2d Sess. 17 (1968).

¹⁸⁴ 114 Cong. Rec. 8778 (Apr. 3, 1968) (Statement of Representative Price).

¹⁸⁵ *Ethics Manual* at 17 (citing House Select Comm. On Ethics, *Advisory Opinion No. 4*, H. Rept. 95-1837, 95th Cong. 2d Sess. App. 61 (1979)).

¹⁸⁶ Representative Gutiérrez’s inattention to the applicable rules and his contractor’s relation to them bears some resemblance to the matter of Representative Young, whom the Committee reprovved in part due to the ISC’s finding “that he was, at best, blithe with respect to the question of gift rule compliance,” and exhibited a “casual attitude” regarding the relevant rules. See *Young* at 69.

¹⁸⁷ *Young* at 70.

¹⁸⁸ See *Gingrey* at 25; *Berkley* at 10; *Stallings* at 5.

C. Code of Ethics, Section 5

The Code of Ethics was adopted by the House to assist federal employees, including officeholders, “in guiding and correcting any tendency toward cynicism of the high trust associated with public service.”¹⁸⁹ It thus reaffirmed standards of conduct “to which all federal employees unquestionably should adhere.”¹⁹⁰ In this spirit, Section 5 includes two prohibitions applicable to House Members: (1) “never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not;” and (2) “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.” Finding a violation of Section 5 requires no proof of a connection between an official action and compensation to the acting Member.

The Committee has also long cautioned Members that when taking official actions, they must “avoid situations in which even an inference might be drawn suggesting improper action.”¹⁹¹ Indeed, the Committee has found violations of Section 5 where an individual or entity is singled out for special treatment, and such special treatment creates an appearance of favoritism.¹⁹² Representative Gutiérrez seems to have recognized the appearances problem when he decided in 2013 to terminate the contract with Mr. Scofield. That decision, Representative Gutiérrez told Committee staff, was partly based on his belief that it would have been difficult to identify and avoid potential, prospective conflicts of interest with Scofield Communications clients, even if his policy positions were formulated and taken wholly independently of any lobbying work by Mr. Scofield.¹⁹³

In this case, the Committee did find some evidence that Mr. Scofield and/or employees of Scofield Communications discussed federal appropriations requests relating to Scofield Communications clients with Representative Gutiérrez and/or his congressional staff.¹⁹⁴ At least one email communication between Mr. Scofield’s wife (an employee of Scofield Communications) and Representative Gutiérrez’s Chief of Staff also referred to a conversation between Mr. Scofield and Representative Gutiérrez in the context of a federal funding request for IPRAC – an organization located in Representative Gutiérrez’s congressional district – though neither Mr. Scofield nor Representative Gutiérrez recalled having such conversation.¹⁹⁵ And at least one of Mr. Scofield’s clients, recognizing Mr. Scofield’s working relationship with

¹⁸⁹ Comm. on Post Office and Civil Service, *Code of Ethics for Government Service*, H. Rept. 1208, 85th Cong. 1st Sess. 1 (1957).

¹⁹⁰ *Id.* at 2.

¹⁹¹ See, e.g., *Whitfield* at 42 (citing House Comm. on Standards of Official Conduct, *Investigation of Financial Transactions Participated In and Gifts of Transportation Accepted by Representative Fernand J. St Germain*, H. Report 100-46, 100th Cong. 1st Sess. 3, 9, 43 (1987)).

¹⁹² See *Whitfield* at 42; *Gingrey* at 25 (noting that the Member “took some care to limit the scope of his official actions”); *Berkley* at 55-56 (noting that “reasonable people would construe the benefit [the Member] received as her motivation, whether it was or not.”).

¹⁹³ Exhibit 2.

¹⁹⁴ *Supra* Section IV.F.3.

¹⁹⁵ See Exhibit 34; 18(a) Interview of Representative Gutiérrez; 18(a) Interview of Doug Scofield.

Representative Gutiérrez to their advantage, asked him to inquire about the status of an appropriation request.¹⁹⁶

However, while the Committee's guidance on this subject is intended to guard against even an inference of improper action, the Committee did not find any evidence that Mr. Scofield received special privileges on behalf of his firm's fundraising or state-level lobbying clients with respect to federal funding requests for their organizations. Nor did the Committee uncover any evidence that Scofield Communications employees or Mr. Scofield, who was not registered as a federal lobbyist at any time while retained under contract by Representative Gutiérrez's congressional office, ever lobbied Representative Gutiérrez or his staff on behalf of any Scofield Communications client. Thus, the Committee found no violation of Section 5 of the Code of the Ethics in this matter.

VI. CONCLUSION

The Committee reiterates that none of its findings in this case should be read to indicate any knowing or willful intent by Representative Gutiérrez or his staff to misuse the MRA or otherwise violate House Rules or CHA regulations governing the work contractors may perform for a congressional office. Although an overwhelming majority of work Mr. Scofield performed from 2003 to 2013 clearly accorded with the contract's terms, Mr. Scofield occasionally performed work for Representative Gutiérrez's office that was either "legislative" in nature or otherwise exceeded the scope of work outlined in the contract. Representative Gutiérrez's payment to Scofield Communications for services that appeared to be "legislative" in nature, or clearly exceeded both the contract's scope and *Members' Handbook* guidelines, resulted in an impermissible use of MRA funds. Based on the totality of the circumstances, and consistent with prior precedent, the Committee decided to reprove Representative Gutiérrez for his conduct in this matter. Moreover, the Committee concluded that Representative Gutiérrez must reimburse the U.S. Treasury in the amount of \$9,700 for those inadvertent misuses of MRA funds arising out of his congressional office's retention of Scofield Communications under contract from 2003 to 2013, or approximately three percent of the total amounts paid from Representative Gutiérrez's MRA under the contract during that period.

Upon publication of this Report and Representative Gutiérrez's reimbursement of funds to the U.S. Treasury, the Committee considers this matter closed.

VII. STATEMENT UNDER HOUSE RULE XIII, CLAUSE 3(C)

The Committee made no special oversight findings in this Report. No budget statement is submitted. No funding is authorized by any measure in this Report.

¹⁹⁶ 18(a) Interview of Doug Scofield.