

EXHIBIT 1

ZOE LOFGREN, CALIFORNIA
CHAIR

BRN CHANDLER, KENTUCKY
G. K. BUTTERFIELD, NORTH CAROLINA
KATHY GASTON, FLORIDA
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DANIEL J. TAYLOR,
COUNSEL TO THE CHAIR

R. BLAKE GIBAM,
CHIEF COUNSEL AND STAFF DIRECTOR

ONE HUNDRED ELEVENTH CONGRESS

U.S. House of Representatives

COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT

Washington, DC 20515-6328

June 15, 2010

JO BONNER, ALABAMA
RANKING REPUBLICAN MEMBER

K. MICHAEL CONAWAY, TEXAS
CHARLES W. DENT, PENNSYLVANIA
GREGG HARPER, MISSISSIPPI
MICHAEL T. MCCALL, TEXAS

KELLY A. STRICKLAND,
COUNSEL TO THE RANKING
REPUBLICAN MEMBER

SUITE HT-2, THE CAPITOL
(202) 226-7109

CONFIDENTIAL

Stanley M. Brand
Brand Law Group
923 Fifteenth Street, N.W.
Washington, D.C. 20005

Re: Investigation of Representative Maxine Waters

Dear Mr. Brand:

On June 15, 2010, the investigative subcommittee adopted a Statement of Alleged Violation in the Matter of Representative Maxine Waters. A copy of the Statement of Alleged Violation is enclosed.

Pursuant to Committee on Standards of Official Conduct Rule 22, Respondent is permitted to file with the investigative subcommittee certain written responses to the Statement of Alleged Violation before the investigative subcommittee transmits the Statement of Alleged Violation to the Standards Committee. Please note that pursuant to Committee Rule 22(a)(1), failure to file an answer to the Statement of Alleged Violation within the time prescribed shall be considered by the Committee as a denial of each count.¹

On May 28, 2010, pursuant to Committee Rule 26(c), the investigative subcommittee provided to the Respondent a copy of the Statement of Alleged Violation that it intended to adopt together with all evidence it intended to use to prove those charges it intended to adopt, including documentary evidence and witness testimony. The investigative subcommittee also provided to the Respondent any exculpatory information, as provided by Committee Rule 25.² Pursuant to Committee Rule 26(f), this evidence was made available to Respondent only after you and Respondent each executed and returned to the investigative subcommittee non-disclosure agreements. These non-disclosure agreements are still in effect, and you and Respondent remain bound by their terms.

¹ Please also note that, pursuant to Committee Rule 17A(f)(2), the report by the Office of Congressional Ethics in this matter may be made public on August 6, 2010.

² Please note that before making any documents public, the investigative subcommittee redacts certain personal identifier information from the documents. As a courtesy, the investigative subcommittee provided you with unredacted copies of all documents. If in the future you have need to use any documents provided to you by the investigative subcommittee in a manner that may make them available to the public, the investigative subcommittee will provide you with redacted copies.

Stanley M. Brand
June 15, 2010
Page 2 of 2

Should you have any questions, please contact Tom Rust at (202) 225-7103.

Sincerely,

A handwritten signature in black ink, appearing to read "RBC", with a horizontal line extending to the right.

R. Blake Chisam
Chief Counsel/Staff Director

Enclosure

cc: The Honorable Maxine Waters

HOUSE OF REPRESENTATIVES

111TH CONGRESS

2d Session

COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

INVESTIGATIVE SUBCOMMITTEE

IN THE MATTER OF REPRESENTATIVE MAXINE WATERS

STATEMENT OF ALLEGED VIOLATION

Adopted June 15, 2010

COE.WAT.OC.018618

STATEMENT OF ALLEGED VIOLATIONS

For the following alleged violations, the Investigative Subcommittee has determined there is "substantial reason to believe that a violation of the Code of Official Conduct, or of a law, rule, regulation, or other standard of conduct applicable to the performance of official duties or the discharge of official responsibilities by a Member, officer, or employee of the House of Representatives has occurred." See Rule 19(f), Rules of the Committee on Standards of Official Conduct.

At all times relevant to this Statement of Alleged Violations, Representative Maxine Waters (Respondent) was a Member of the United States House of Representatives representing the 35th District of California. During the 110th Congress, Respondent was Chairwoman of the Housing and Community Opportunity Subcommittee of the Committee on Financial Services.

STATEMENT OF FACTS IN SUPPORT OF ALLEGED VIOLATIONS

I. ONEUNITED BANK'S MEETING WITH THE DEPARTMENT OF THE TREASURY

1. On September 7, 2008, the United States Department of Treasury and the Federal Housing Finance Agency (FHFA) placed the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) into conservatorship (the Conservatorship).

2. OneUnited Bank (OneUnited) held substantial investments in Fannie Mae and Freddie Mac preferred stock.

3. Due to the Conservatorship's impact on the value of Fannie Mae and Freddie Mac stock, OneUnited incurred unrealized losses that effectively wiped out OneUnited's Tier 1 capital and threatened the viability of the bank.

4. Sometime around September 7, 2008, Kevin Cohee, the Chief Executive Officer (CEO) and Chairman of the Board of Directors of OneUnited, contacted Respondent to request a meeting with Treasury officials regarding the impact of the Conservatorship on minority banks.

5. Respondent was "familiar" with Kevin Cohee. Kevin Cohee, and his wife Teri Williams, President of OneUnited, hosted a fundraiser at their home for Respondent. They also contributed to Respondent's campaign on numerous occasions.

6. During the same time period, Robert Cooper, Senior Counsel to OneUnited and Chair-Elect of the National Bankers Association (NBA), contacted Respondent and asked her to arrange a meeting with Treasury officials regarding the impact of the Conservatorship on minority banks. Respondent has a long history of assisting small and minority owned banks generally, and NBA in particular.

7. Respondent called then-Treasury Secretary Henry Paulson on or around September 8, 2008, and requested a meeting on behalf of NBA, which OneUnited was a member of, to discuss the impact of the Conservatorship on minority banks.

8. Then-Secretary Paulson granted Respondent's request by arranging for several senior Treasury officials to meet with NBA. He granted Respondent's request because she was a Member of Congress.

9. Respondent instructed her Chief of Staff, Mikael Moore, who was also her grandson, to follow up with Treasury for the meeting arrangements.

10. On September 9, 2008, Kevin Cohee and Robert Cooper, the CEO of OneUnited and OneUnited's long-time Senior Counsel met with the Treasury officials. No other representatives from NBA or any other NBA member bank were present. Secretary Paulson did not attend the meeting.

11. During the meeting, Kevin Cohee and Robert Cooper discussed the impact of the Conservatorship on OneUnited and requested approximately \$50 million dollars from Treasury to compensate OneUnited for unrealized losses it incurred as a result of the Conservatorship.

12. Treasury was unable to grant OneUnited's request because it lacked the legislative authority to do so.

II. RESPONDENT'S PERSONAL INTEREST IN ONEUNITED BANK

13. Respondent's husband, Sidney Williams, served as a member of the OneUnited Board of Directors from January 23, 2004, until April 21, 2008.

14. At all times relevant, Respondent's husband owned 3,500 shares of OneUnited preferred stock and 476 shares of OneUnited common stock.

15. Respondent disclosed her husband's ownership of OneUnited stock on Respondent's Financial Disclosure Statements filed for calendar years 2004, 2005, 2006, and 2007.

16. The actual value of Respondent's husband's OneUnited shares at the end of calendar year 2007 was \$352,089.64, which at the time accounted for somewhere between 4.6% and 15.2% of Representative Waters' and her husband's combined net worth as reported in Respondent's Financial Disclosure Statement for 2007, filed in May of 2008.

17. On June 30, 2008, the actual value of Respondent's husband's OneUnited shares was \$351,751.68.

18. On September 30, 2008, after the Conservatorship, the actual value of Respondent's husband's OneUnited shares had fallen to \$175,000.

19. If OneUnited failed, Respondent's husband's investment in OneUnited would have been worthless.

20. Sometime early in September 2008, Respondent had a discussion with Representative Barney Frank regarding OneUnited and her husband's prior board membership with the bank. At the time of this discussion, Representative Frank did not know that Respondent's husband owned approximately \$350,000 worth of OneUnited stock or owned any stock in OneUnited.

21. Representative Frank told Respondent not to get involved and that he would handle the issues related to OneUnited.

22. Respondent agreed to refrain from advocating on behalf of OneUnited.

23. Respondent did not instruct her Chief of Staff, Mikael Moore, to refrain from assisting OneUnited.

III. CONTINUED ASSISTANCE PROVIDED TO ONEUNITED BANK AFTER THE MEETING WITH TREASURY

24. Following the September 9, 2008, meeting with Treasury, Respondent's Chief of Staff, Mikael Moore, was actively involved in assisting OneUnited representatives with their request for capital from Treasury and crafting legislation to authorize Treasury to grant the request.

25. On September 19, 2008, Respondent's Chief of Staff sent an email to a member of Representative Barney Frank's staff. The subject of the email was "O[ne]U[nited] is in trouble." Representative Frank's staffer replied, "depends on scope." Respondent's Chief of Staff responded that "It will become a timetable issue."

26. On September 20, 2008, Respondent's Chief of Staff sent an email to Kevin Cohee, CEO of OneUnited. The subject of the email was "Draft" and attached to the email was draft legislation entitled, "LEGISLATIVE PROPOSAL FOR TREASURY AUTHORITY TO PURCHASE MORTGAGE RELATED ASSETS[.]"

27. On September 22, 2008, Respondent's Chief of Staff received an email from Kevin Cohee. Mr. Cohee requested that Respondent's Chief of Staff print a document for their meeting. The document was draft language for proposed legislation that would give Treasury authority to purchase certain assets that would have applied to OneUnited.

28. On September 23, 2008, Respondent's Chief of Staff received an email from Robert Cooper, Senior Counsel to OneUnited. The subject of the email was, "Fw: Treasury Request Appendix Final.xls," and included a document containing a chart with information regarding OneUnited's shares of Fannie Mae and Freddie Mac stock and OneUnited's request for approximately \$50 million from Treasury.

29. On September 25, 2008, Respondent's Chief of Staff received an email from Robert Cooper. The subject of the email was, "Any update?" No message was contained in the body of the email. Respondent's Chief of Staff replied to the email, "Call in the office."

30. On September 28, 2008, Respondent's Chief of Staff received an email from Robert Cooper. The subject of the email was, "Thank you for all your hard work!" No message was contained in the body of the email.

31. On September 29, 2008, Respondent's Chief of Staff received an email from Robert Cooper. The subject of the email was "Checking in[.]" Mr. Cooper wrote, "In thinking about next steps, we are prepared to rally our supporters by phone or through direct personal contacts. What is your sense, given that the inevitable 'mental fatigue' will begin to set in

around a process that even as we speak has not been settled. Obviously, we're trying to get some sort of written commitment from Treasury on an expedited basis prior to the recess for the Jewish holidays and before tomorrow's deadline. Let me know."

IV. ONEUNITED OBTAINED TARP FUNDING

32. On October 3, 2008, the Emergency Economic Stabilization Act (EESA), which established the Troubled Asset Relief Program (TARP), was signed into law. Section 103(6) of EESA provided, "In exercising the authorities granted in this Act, the Secretary shall take into consideration-- (6) providing financial assistance to financial institutions, including those serving low- and moderate-income populations and other underserved communities, and that have assets less than \$1,000,000,000, that were well or adequately capitalized as of June 30, 2008, and that as a result of the devaluation of the preferred government-sponsored enterprises stock will drop one or more capital levels, in a manner sufficient to restore the financial institutions to at least an adequately capitalized level[.]"

33. The language in the TARP legislation applied to OneUnited, and Representative Frank stated the language was intended to include OneUnited.

34. OneUnited applied for TARP funding.

35. In connection with its application for TARP funding, OneUnited also raised significant amounts of private capital and applied to the Federal Deposit Insurance Corporation for a tax credit waiver.

36. On October 31, 2008, Respondent's Chief of Staff received an email from the CEO of OneUnited, Kevin Cohee. Mr. Cohee stated, "We are pleased to report that we received \$17 Million in private investment today. Thank you for your kindness and consideration in

helping us to consummate this transaction. This is in addition to the investment we received yesterday; the Bank is now adequately capitalized and we will be applying to the TARP program next week."

37. On December 19, 2008, OneUnited received \$12,063,000 dollars in TARP funding from Treasury.

38. If OneUnited had not received this funding, Respondent's husband's financial interest in OneUnited would have been worthless. Thus, the preservation of the value of Respondent's husband's investment in OneUnited personally benefitted Respondent.

ALLEGED VIOLATIONS

COUNT I: Conduct in Violation of House Rule XXIII, clause 1

39. Paragraphs 1 through 38 are reincorporated as if set forth fully herein.

40. House Rule XXIII, clause 1 provides:

A Member . . . shall behave at all times in a manner that shall reflect creditably on the House.

41. OneUnited sought to obtain funding from Treasury and would have failed if it did not receive capital.

42. Respondent's Chief of Staff provided continued assistance to OneUnited in their efforts to obtain legislation that ultimately resulted in OneUnited receiving funding from Treasury.

43. As of September 30, 2008, during the time period when Respondent's Chief of Staff provided this assistance to OneUnited, Respondent's husband's financial interest in

OneUnited, which was worth \$350,000 as of June 30, 2008, had declined to approximately \$175,000.

44. If OneUnited had not received this funding, Respondent's husband's financial interest in OneUnited would have been worthless. Thus, the preservation of the value of Respondent's husband's investment in OneUnited would personally benefit Respondent.

45. Respondent is responsible for the oversight and administration of her congressional office.

46. Respondent is responsible for the conduct and actions of members of her staff, especially her Chief of Staff, when members of her staff are acting within the scope and course of their employment.

47. Once Respondent realized that she "should not be involved" in assisting OneUnited, Respondent should have instructed her Chief of Staff, Mikael Moore, to refrain from assisting OneUnited. Respondent failed to do so.

48. Respondent's Chief of Staff's continued involvement in assisting OneUnited created an appearance that Respondent was taking official action for Respondent's personal benefit, which did not reflect creditably on the House.

49. Respondent's failure to instruct her Chief of Staff to refrain from assisting OneUnited after Respondent realized that she "should not be involved" violated the House Rule applicable to behaving at all times in a manner that shall reflect creditably on the House; all in violation of House Rule XXIII, clause 1.

COUNT II: Conduct in Violation of the Spirit of House Rule XXIII, clause 3

50. Paragraphs 1 through 49 are reincorporated as if set forth fully herein.

51. House Rule XXIII, clause 2 provides:

A Member . . . shall adhere to the spirit and the letter of the Rules of the House and to the rules of duly constituted committees thereof.

52. House Rule XXIII, clause 3 provides:

A Member . . . may not receive compensation and may not permit compensation to accrue to the beneficial interest of such individual from any source, the receipt of which would occur by virtue of influence improperly exerted from the position of such individual in Congress.

53. Respondent is responsible for the oversight and administration of her congressional office.

54. Respondent is responsible for the conduct and actions of members of her staff, especially her Chief of Staff, when members of her staff are acting within the scope and course of their employment.

55. The preservation of the value of Respondent's husband's investment in OneUnited would constitute compensation accruing to the beneficial interest of Respondent.

56. Respondent's failure to instruct her Chief of Staff to refrain from assisting OneUnited after Respondent realized that she "should not be involved" was inconsistent with the spirit of the House Rule applicable to receiving compensation by virtue of influence improperly exerted from the position of the Respondent in Congress; all in violation of House Rule XXIII, clause 2.

COUNT III: Conduct in Violation of the Code of Ethics for Government Service, clause 5

57. Paragraphs 1 through 56 are reincorporated as if set forth fully herein.

58. The Code of Ethics for Government Service (72 Stat., Part 2, B12, H. Res. 175, 85th Cong.) (adopted July 11, 1958) provides:

[A]ny person in Government service should:

5. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.

59. Respondent is responsible for the oversight and administration of her congressional office.

60. Respondent is responsible for the conduct and actions of members of her staff, especially her Chief of Staff, when members of her staff are acting within the scope and course of their employment.

61. The preservation of the value of Respondent's husband's investment in OneUnited would constitute a benefit to Respondent.

62. Reasonable persons could construe Respondent's Chief of Staff's continued involvement in assisting OneUnited as the dispensing of special favors or privileges to OneUnited, and accepting the preservation of the value her husband's investment in OneUnited as a benefit under circumstances which might influence the performance of Respondent's governmental duties; all in violation of the Code of Ethics for Government Service, clause 5.

EXHIBIT 2

BRAND LAW GROUP

A PROFESSIONAL CORPORATION
823 FIFTEENTH STREET, N.W.
WASHINGTON, D.C. 20005

RECEIVED

2010 JUN 30 PM 4:45

COMMITTEE ON STANDARDS
TELEPHONE: (202) 737-7700
TELECOPIER: (202) 737-7885

June 30, 2010

HAND DELIVERED

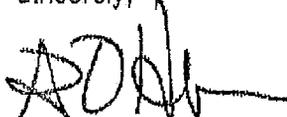
R. Blake Chisam, Esq.
Chief Counsel/Staff Director
U.S. House of Representatives
Committee on Standards of Official Conduct
HT-2 Capitol Building
Washington, D.C. 20515-6328

Re: Representative Maxine Waters

Dear Mr. Chisam:

Enclosed please find our Motion for a Bill of Particulars and Memorandum of Points and Authorities in Support Thereof, on behalf of Congresswoman Maxine Waters.

Sincerely,



Andrew D. Herman
Counsel for Congresswoman Waters

ADH:mob

UNITED STATES HOUSE OF REPRESENTATIVES
Committee on Standards of
Official Conduct

In the Matter of

REPRESENTATIVE
MAXINE WATERS

MOTION FOR A BILL OF PARTICULARS

Representative Maxine Waters, through counsel, and pursuant to Rule 22(b) of this Committee's Rules, respectfully moves this Committee to furnish her with a bill of particulars as to the Statement of Alleged Violations served upon her on June 15, 2010.¹

1. As to the Statement of Facts in Support of Alleged Violations, the Respondent requests that the Committee state with particularity:
 - a. the relevancy of the Respondent's relationship with her Chief of Staff;
 - b. the exact value of Respondent's husband's OneUnited Shares at the end of calendar year 2007 represented as a percentage of Respondent's and her husband's personal wealth;
 - c. the relevancy of the calculation of the exact value of Respondent's husband's OneUnited Shares at the end of calendar year 2007 as a percentage of Respondent's and her husband's personal wealth;
 - d. the specific date that Respondent discussed assistance of OneUnited with Representative Barney Frank.
2. As to Count One of the Statement of Alleged Violations, the Respondent requests that the Committee state with particularity:

¹ On June 23, 2010, the chair of the Investigative Subcommittee, Rep. Cathy Kasten, granted Respondent's Motion for an Extension of Time With Which to File a Motion for a Bill of Particulars to June 30, 2010.

- a. the definition of "reflect creditably" utilized by the Committee and the basis for such definition under House rules, government codes or other precedent;
- b. the factual basis for the Committee's conclusion that "OneUnited . . . would have failed if it did not receive capital [from the Department of the Treasury];"
- c. the definition of "continued assistance" utilized by the Committee and the basis for such definition under House rules, government codes or other precedent;
- d. the specific nature of the "continued assistance" alleged in this matter;
- e. the factual basis for the Committee's conclusion that the alleged "continued assistance" was provided to OneUnited and not to a broad range of banks comprising the membership of the National Bankers Association ("NBA");
- f. the specific nature of "this funding" that purportedly preserved Respondent's husband's financial interest;
- g. the factual basis for the Committee's conclusion that Respondent failed to instruct her Chief of Staff "to refrain from assisting OneUnited;"
- h. the definition of "continued involvement," the basis for such definition under House rules, government codes or other precedent and if the Committee's use of that term differs from its use of "continued assistance;"
- i. the specific nature of the "continued involvement" alleged in this matter.

3. As to Count Two of the Statement of Alleged Violations, the Respondent requests that the Committee state with particularity:

- a. the definition of "compensation" utilized by the Committee and the basis for such definition under House rules, government codes or other precedent;
- b. the definition of "beneficial interest" utilized by the Committee and the basis for such definition under House rules, government codes or other precedent;
- c. the definition of "influence improperly exerted" utilized by the Committee and the basis for such definition under House rules, government codes or other precedent;
- d. the specific nature of the "influence . . . exerted from the position of the Respondent in Congress" in this matter;
- e. the rationale underlying the Committee's conclusion that the "preservation of the value of Respondent's husband's investment in OneUnited would constitute compensation accruing to the beneficial interest of Respondent."

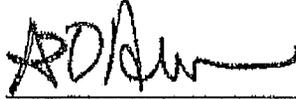
4. As to Count Three of the Statement of Alleged Violations, the Respondent requests that the Committee state with particularity:

- a. the definition of "discriminate unfairly" utilized by the Committee and the basis for such definition under House rules, government codes or other precedent;
- b. the definition of "special favors or privileges" utilized by the Committee and the basis for such definition under House rules, government codes or other precedent;

- c. the definition of "favours or benefits" utilized by the Committee and the basis for such definition under House rules, government codes or other precedent;
- d. the specific nature of the Respondent's actions that purportedly "discriminate[d] unfairly;"
- e. the specific nature of the "special favours or privileges" and "favours or benefits" purportedly dispensed by Respondent.

An Oral Hearing is requested on this Motion.

Respectfully submitted this 30th day of June, 2010



Stanley M. Brand
Andrew D. Herman
Brand Law Group, PC
923 15th Street, NW
Washington, DC 20005

Counsel for Representative Maxine Waters

Motion for a Bill of Particulars
Page 5

COE.WAT.OC.018638

CERTIFICATE OF SERVICE

The undersigned declares under penalties of perjury that on June 30th, 2010, I hereby served a copy of the foregoing Motion for a Bill of Particulars, on Blake Chisam, Counsel, House Committee on Standards of Official Conduct;



Andrew D. Herman

UNITED STATES HOUSE OF REPRESENTATIVES
Committee on Standards of
Official Conduct

In the Matter of
REPRESENTATIVE
MAXINE WATERS

:
:
:
:

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF
MOTION FOR A BILL OF PARTICULARS

1. Rule 22(b) of the Rules of Procedure of the Committee on Standards of Official Conduct permits the filing of a Motion for a Bill of Particulars directed to the Statement of Alleged Violations.

2. There can be little dispute that the particulars sought by Respondent are required by the vague and subjective nature of the standards of conduct alleged to have been violated.

3. As detailed by the Memorandum of Points and Authorities in Support of Motion for Bill of Particulars filed by counsel in In the Matter of Representative Charles H. Wilson, H.R. Rep. No. 930, 96th Cong. 2d Sess. at 61-2 (citing Hearings on H. Res. 18 and Similar Measures before House Comm. on the Rules, Creating a Select Committee on Standards and Conduct, 90th Cong. 1st Sess. at 21), "when you have a code of ethics, unless it is criminal law, you have admittedly said it is going to be in a gray area and subject to all kinds of interpretations." (Emphasis added.)

Indeed, as Charles H. Wilson's Memorandum of Points and Authorities cites, this Committee has observed that:

The Committee is cognizant of the fact that these traditional standards of conduct as expressed in the Code of Ethics for Government Service, and as revealed in House precedents, are not delineated with any great exactitude, and may therefore prove difficult in enforcement. The Committee is likewise aware that because of the generality of these standards their violation is easily alleged, and this may be subject to

some abuse. However, the Committee believes it was for the very purpose of evaluating particular situations against existing standards, and of weeding out baseless charges from legitimate ones, that this Committee was created.

In the Matter of Charles H. Wilson, H.R. Rep. No. 96-930 at 61-2 (quoting House Committee on Standards of Official Conduct, Ethics Manual for Members and Employees of the U.S. House of Representatives, H.R. Doc. No 96-134, 96th Cong. 1st Sess. at 8-9 (1979)) (emphases added). See also In the Matter of Representative Robert L.F. Sikes, H.R. Rep. No 1364, 94th Cong. 2d Sess. at 8 (1976).

4. In this matter, the Statement of Alleged Violations relies on the most general standards applied to members of Congress. Count One alleges that Respondent's conduct failed to "reflect creditably on the House" in violation of House Rule XXIII, clause 1; Count Two alleges that Respondent's conduct violated "the spirit" of House Rule XXIII, clause 3 by receiving compensation by virtue of improper influence; Count Three alleges a violation of the Code of Ethics for Government Service, clause 5, by dispensing favors and accepting a benefit for such actions. Of the three counts, only the third can reasonably be described as presenting any specific guidance for a member's conduct.

5. Moreover, the facts cited in the Statement of Alleged Violations are ambiguous and convoluted. In essence, the Statement of Alleged Violations alleges that Respondent violated the aforementioned general standards of conduct by failing to adequately supervise her Chief of Staff's conduct and that such allegedly improper conduct redounded to her benefit by assisting an entity in which Respondent's husband held a financial interest as a member of a class.

6. In sum, the Statement of Allegations against Respondent presents exceedingly general allegations that are premised upon an unclear set of facts. The Respondent therefore requires an explication of the definitions and standards which the

Committee, intends to utilize in order to assert any defenses available to her under the House Rules of Conduct and the Code of Ethics for Government Service.

Respectfully submitted this 30th day of June, 2010.



Stanley M. Brand
Andrew D. Herman
Brand Law Group, PC
923 15th Street, NW
Washington, DC 20005

Counsel for Rep. Maxine Waters

CERTIFICATE OF SERVICE

The undersigned declares under penalties of perjury that on June 30th, 2010, I hereby served a copy of the foregoing Memorandum of Points and Authorities In Support of Motion for a Bill of Particulars, on Blake Chlsam, Counsel, House Committee on Standards of Official Conduct:



Andrew D. Herman

EXHIBIT 3

ZOB LOFGREEN, CALIFORNIA
CHAIR
BRN CHANDLER, KENTUCKY
G. K. BUTTERFIELD, NORTH CAROLINA
KATHY CASTON, FLORIDA
PETER WELCH, VERMONT
DANIEL J. TAYLOR,
COUNSEL TO THE CHAIR
R. BLAKE CHISAM,
CHIEF COUNSEL AND STAFF DIRECTOR

JD BONNER, ALABAMA
RANKING REPUBLICAN MEMBER
K. MICHAEL CONAWAY, TEXAS
CHARLES W. DENT, PENNSYLVANIA
GREGG HANPER, MISSISSIPPI
MICHAEL T. MCCALL, TEXAS

KELLE A. STRICKLAND,
COUNSEL TO THE RANKING
REPUBLICAN MEMBER

SUITE 111-2, THE CAPITOL
(202) 225-7103

ONE HUNDRED ELEVENTH CONGRESS

U.S. House of Representatives

COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT

Washington, DC 20515-6328

July 1, 2010

CONFIDENTIAL

Stanley M. Brand
Brand Law Group
923 Fifteenth Street, N.W.
Washington, D.C. 20005

Re: Investigation of Representative Maxine Waters

Dear Mr. Brand:

On July 1, 2010, the investigative subcommittee adopted an Order and Memorandum in Support of Order in response to the Motion for Bill of Particulars filed by Representative Maxine Waters. A copy of the Order and Memorandum in Support of Order is enclosed.

Pursuant to Committee on Standards of Official Conduct Rule 22, Respondent is permitted to file with the investigative subcommittee certain written responses to the Statement of Alleged Violation before the investigative subcommittee transmits the Statement of Alleged Violation to the Standards Committee. Please note that pursuant to Committee Rule 22(a)(1), failure to file an answer to the Statement of Alleged Violation within the time prescribed shall be considered by the Committee as a denial of each count.¹

Should you have any questions, please contact Tom Rust at (202) 225-7103.

Sincerely,



R. Blake Chisam
Chief Counsel/Staff Director

Enclosure

¹ Please also note that, pursuant to Committee Rule 17A(f)(2), the report by the Office of Congressional Ethics in this matter may be made public on August 6, 2010.

Stanley M. Brand
July 1, 2010
Page 2 of 2

cc: The Honorable Maxine Waters

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

In the Matter of

REPRESENTATIVE MAXINE WATERS,

Respondent.

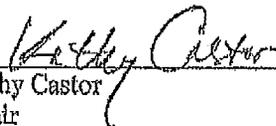
ORDER

This investigative subcommittee having considered Respondent's Motion for a Bill of Particulars, Memorandum of Points and Authorities, and the entire record herein, hereby finds:

1. Each count of the Statement of Alleged Violation contains a plain and concise statement of the alleged facts of the violation.
2. Each count of the Statement of Alleged Violation includes a reference to the provision of the Code of Official Conduct or law, rule, regulation or other applicable standard of conduct governing the performance of duties or discharge of responsibilities alleged to have been violated.
3. Each count of the Statement of Alleged Violation contains information sufficient to advise Respondent of the allegations against her, and sufficient to afford her a meaningful opportunity to respond to those allegations. Accordingly,

It is by the Investigative Subcommittee this 15th day of July, 2010, ORDERED

That the Motion is DENIED.



Kathy Castor
Chair



Mike Conaway
Ranking Republican Member

Copies to:

Stanley M. Brand, Esq.
Brand Law Group
923 Fifteenth Street, N.W.
Washington, D.C. 20005

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

In the Matter of
REPRESENTATIVE MAXINE WATERS,
Respondent.

MEMORANDUM IN SUPPORT OF ORDER

On June 30, 2010, Respondent submitted to the Investigative Subcommittee a Motion for Bill of Particulars with respect to the Statement of Alleged Violation adopted by the subcommittee and transmitted to Respondent on June 15, 2010. By a separate Order, the Investigative Subcommittee denied Respondent's Motion for Bill of Particulars on July 1, 2010. Through this Memorandum the Investigative Subcommittee sets forth the bases for its Order denying Respondent's motion.¹

STANDARD OF REVIEW

Pursuant to Rule 19(f) of the Rules of the Committee on Standards of Official Conduct (Standards Committee Rules), each count of a Statement of Alleged Violation: (1) "shall relate to a separate violation," (2) "shall contain a plain and concise statement of the alleged facts of such violation," and (3) "shall include a reference to the provision of the Code of Official Conduct or law, rule, regulation or other applicable standards of conduct governing the performance of duties or discharge of responsibilities alleged to have been violated."²

Standards Committee Rule 22(b) permits a Respondent to "file a Motion for a Bill of Particulars within 10 days of the date of transmittal of the Statement of Alleged Violation."³ A Bill of Particulars "is essentially a procedural device used to inform a defendant of the nature of the charge against [her], to enable [her] to prepare a defense, to avoid or minimize danger of surprise at trial, and to enable [her] to plead double jeopardy in the event of subsequent

¹ The investigative subcommittee notes that Respondent requested an "Oral Hearing" on its Motion for a Bill of Particulars. After reviewing Respondent's motion and the Memorandum of Points and Authorities in Support of the motion, the investigative subcommittee determined that such a hearing was unnecessary, and thus that request is denied.

² Rules of the Committee on Standards of Official Conduct (Standards Committee Rules), Rule 19(f).

³ Standards Committee Rule 22(b). On June 23, 2010, Respondent requested an extension of time within which to file her Motion for Bill of Particulars, which request was granted by the Chair of the Investigative Subcommittee pursuant to Standards Committee Rule 22(e)(1). Accordingly, Respondent's motion is timely.

prosecution for the same offense."⁴ A Statement of Alleged Violation must be sufficiently particularized to advise a Respondent of the allegations against her and to afford her a meaningful opportunity to respond to those allegations.⁵ A Motion for a Bill of Particulars may be denied where the Investigative Subcommittee determines that its Statement of Alleged Violation meets this standard.⁶

A Bill of Particulars "is to be distinguished from methods of 'discovery.' In the context of criminal prosecutions, courts have regularly held that government attorneys will not be forced to reveal their entire case in response to a motion of this sort."⁷ Additionally, "conclusions of law or legal theories are not a proper subject of" a motion for a Bill of Particulars.⁸

RESPONSE TO INDIVIDUAL REQUESTS

For the reasons set forth below, the Investigative Subcommittee has found that the Statement of Alleged Violation adopted by the Investigative Subcommittee on June 15, 2010, provides Respondent with sufficient notice of the allegations against her and affords Respondent a meaningful opportunity to respond to those allegations. Therefore, Respondent's Motion for a Bill of Particulars is denied.

With respect to each request in Respondent's Motion for Bill of Particulars, the investigative subcommittee finds as follows:

1. Statement of Facts in Support of Alleged Violation

- a. This request is denied because "relevancy" is not a proper subject of a Bill of Particulars.
- b. This request is denied because information related to this request that is sufficiently particularized to advise Respondent of the allegations against her and to afford her a meaningful opportunity to respond is contained in paragraph 16 of the Statement of Alleged Violation. The investigative subcommittee notes that it requested more particularity from Respondent on this point, but Respondent was unable to provide it.
- c. This request is denied because "relevancy" is not a proper subject of a Bill of Particulars.

⁴ Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson*, H. Rep. 96-930, 96th Cong., 2d Sess. at 64 (May 8, 1980) (hereinafter *Wilson*).

⁵ Comm. on Standards of Official Conduct, *In the Matter of Representative Jay Kim*, H. Rep. 105-797, 105th Cong., 2d Sess. at 806 (Oct. 8, 1998); see also Comm. on Standards of Official Conduct, *In the Matter of Representative Barbara-Rose Collins*, H. Rep. 104-876, 104th Cong., 2d Sess. at 100 (Jan. 2, 1997).

⁶ *Id.*

⁷ *Wilson*, at 64.

⁸ *Id.*, at 65.

- d. This request is denied because information related to this request that is sufficiently particularized to advise Respondent of the allegations against her and to afford her a meaningful opportunity to respond is contained in paragraph 20 of the Statement of Alleged Violation.

2. Count I of the Statement of Alleged Violation

- a. This request is denied because conclusions of law or legal theories are not a proper subject of a Bill of Particulars and are more properly asserted in a Motion to Dismiss.
- b. This request is denied because information related to this request that is sufficiently particularized to advise Respondent of the allegations against her and to afford her a meaningful opportunity to respond is contained in paragraphs 1 to 3 of the Statement of Alleged Violation.
- c. This request is denied because information related to this request that is sufficiently particularized to advise Respondent of the allegations against her and to afford her a meaningful opportunity to respond is contained in paragraphs 24 to 31 of the Statement of Alleged Violation.
- d. This request is denied because information related to this request that is sufficiently particularized to advise Respondent of the allegations against her and to afford her a meaningful opportunity to respond is contained in paragraphs 24 to 31 of the Statement of Alleged Violation.
- e. This request is denied because information related to this request that is sufficiently particularized to advise Respondent of the allegations against her and to afford her a meaningful opportunity to respond is contained in paragraphs 10, 11, 20, 21, 22, 25, 26, 28, and 33 of the Statement of Alleged Violation.
- f. This request is denied because information related to this request that is sufficiently particularized to advise Respondent of the allegations against her and to afford her a meaningful opportunity to respond is contained in paragraphs 35 to 38 of the Statement of Alleged Violation.
- g. This request is denied because information related to this request that is sufficiently particularized to advise Respondent of the allegations against her and to afford her a meaningful opportunity to respond is contained in paragraphs 9 and 21 to 31 of the Statement of Alleged Violation. The investigative subcommittee additionally notes the following:
 - i. Respondent's Chief of Staff told the investigative subcommittee that he was the "main point of contact after, after the Congresswoman spoke to Mr. Paulson." (CSOC.WAT.TRANS.000423.)

- ii. Paragraph 4 of the Memorandum of the Office of Congressional Ethics' Interview of Respondent's Chief of Staff states, "Representative Waters asked The Chief of Staff to Representative Maxine Waters to follow up with the Treasury Department about the meeting."
- iii. Respondent's Chief of Staff told the investigative subcommittee that after the meeting "there was no specific direction" regarding follow up after the meeting. (CSOC.WAT.TRANS.000475.)
- iv. Respondent told the investigative subcommittee that after her conversation with Representative Frank, she understood Representative Frank "would certainly take the lead responsibility. What is not easily understood sometimes is how staffs talk to each other, ask each other questions. One Member's staff will call another member's staff if they think they know something or have information they need. And to that extent, I don't know, but I know Frank's office was in charge of this." (CSOC.WAT.TRANS.000675 to 676.)
- v. Respondent's Chief of Staff told the investigative subcommittee that Respondent expressed "no concern" after her conversation with Representative Frank. (CSOC.WAT.TRANS.000485.)
- vi. Respondent told the investigative subcommittee that the only discussions she had with her Chief of Staff about OneUnited "would have been the day that they came to the office unannounced, alarmed about the situation of minority banks." (CSOC.WAT.TRANS.000000668.)
- vii. Respondent's Chief of Staff told the investigative subcommittee that Respondent "wasn't aware" that he was receiving email from OneUnited executives after the meeting. (CSOC.WAT.TRANS.000475.)
- viii. Respondent told the investigative subcommittee that she did not know but was "not surprised" that her Chief of Staff was exchanging emails and attending meetings with OneUnited executives after the meeting. (CSOC.WAT.TRANS.000000659, 662, and 665.)
- h. This request is denied because information related to this request that is sufficiently particularized to advise Respondent of the allegations against her and to afford her a meaningful opportunity to respond is contained in paragraphs 24 to 31 of the Statement of Alleged Violation.
- i. This request is denied because information related to this request that is sufficiently particularized to advise Respondent of the allegations against her and to afford her a meaningful opportunity to respond is contained in paragraphs 24 to 31 of the Statement of Alleged Violation.

3. Count II of the Statement of Alleged Violation

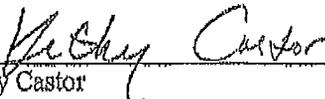
- a. This request is denied because conclusions of law or legal theories are not a proper subject of a Motion for a Bill of Particulars and are more properly asserted in a Motion to Dismiss.
- b. This request is denied because conclusions of law or legal theories are not a proper subject of a Motion for a Bill of Particulars and are more properly asserted in a Motion to Dismiss.
- c. This request is denied because conclusions of law or legal theories are not a proper subject of a Motion for a Bill of Particulars and are more properly asserted in a Motion to Dismiss.
- d. This request is denied because information related to this request that is sufficiently particularized to advise Respondent of the allegations against her and to afford her a meaningful opportunity to respond is contained in paragraphs 24 to 31 of the Statement of Alleged Violation.
- e. This request is denied because conclusions of law or legal theories are not a proper subject of a Motion for a Bill of Particulars and are more properly asserted in a Motion to Dismiss.

4. Count III of the Statement of Alleged Violation

- a. This request is denied because conclusions of law or legal theories are not a proper subject of a Motion for a Bill of Particulars and are more properly asserted in a Motion to Dismiss.
- b. This request is denied because conclusions of law or legal theories are not a proper subject of a Motion for a Bill of Particulars and are more properly asserted in a Motion to Dismiss.
- c. This request is denied because conclusions of law or legal theories are not a proper subject of a Motion for a Bill of Particulars and are more properly asserted in a Motion to Dismiss.
- d. This request is denied because information related to this request that is sufficiently particularized to advise Respondent of the allegations against her and to afford her a meaningful opportunity to respond is contained in paragraphs 24 to 31 of the Statement of Alleged Violation.
- e. This request is denied because information related to this request that is sufficiently particularized to advise Respondent of the allegations against her and to afford her a meaningful opportunity to respond is contained in paragraphs 24 to 31 of the Statement of Alleged Violation.

CONCLUSION

In light of the foregoing, the Investigative Subcommittee finds that Respondent's Motion for Bill of Particulars does not state a sufficient basis requiring further particularization of the Statement of Alleged Violation. Accordingly, the Respondent's Motion for Bill of Particulars is denied.



Kathy Castor
Chair



Mike Conaway
Ranking Republican Member

Copies to:

Stanley M. Brand, Esq.
Brand Law Group
923 Fifteenth Street, N.W.
Washington, D.C. 20005

EXHIBIT 4

UNITED STATES HOUSE OF REPRESENTATIVES
Committee on Standards of
Official Conduct

In the Matter of :
:
REPRESENTATIVE :
:
MAXINE WATERS :
:

MOTION TO DISMISS THE STATEMENT OF ALLEGED VIOLATIONS

Representative Maxine Waters, through counsel, and pursuant to Rule 22(c)(1) of this Committee's Rules, respectfully moves this Committee to dismiss the Statement of Alleged Violations served upon her on June 15, 2010. As Comm. Rule 22(c)(2) provides: "A Motion to Dismiss may be made on the grounds that the Statement of Alleged Violation fails to state facts that constitute a violation of the Code of Official Conduct or other applicable law, rule, regulation, or standard of conduct . . ." As grounds for this Motion, the Respondent states as follows:

1. Counts I-III fail to state facts constituting a violation of the House Rules or Code of Ethics for Government Service because they:
 - a. fail to follow or distinguish this Committee's precedent exonerating nearly identical conduct, most recently expressed by In the Matter of Representative Sam Graves, H.R. Rep. No. 320, 111th Cong. (Oct. 29, 2009);
 - b. fail to accurately state facts that constitute the violations alleged in Counts I-III.

An Oral Hearing is requested on this Motion. Respondent also asks that the Committee acknowledge this request for an Oral Hearing in ruling on this motion and provide an explanation for such decision should it deny this request.

Respectfully submitted this 12th day of July, 2010.



Stanley M. Brand
Andrew D. Herman
Brand Law Group, PC
923 15th Street, NW
Washington, DC 20005

Counsel for Representative Maxine Waters

CERTIFICATE OF SERVICE

The undersigned declares under penalties of perjury that on July 12, 2010, I hereby served a copy of the foregoing Motion to Dismiss the Statement of Alleged Violations, on Blake Chisam, Counsel, House Committee on Standards of Official Conduct:



Andrew D. Herman

UNITED STATES HOUSE OF REPRESENTATIVES
Committee on Standards of
Official Conduct

In the Matter of

REPRESENTATIVE
MAXINE WATERS

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COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
MOTION TO DISMISS THE STATEMENT OF ALLEGED VIOLATIONS

I. Introduction

In October of last year, this Committee issued In the Matter of Representative Sam Graves, H.R. Rep. No. 320, 111th Cong. (Oct. 29, 2009). The Graves report exonerated the subject of all charges relating to his involvement with a friend and co-investor in renewable fuel cooperatives who appeared at a hearing before a committee on which the Representative served as the Ranking Member. In clearing Representative Graves, this Committee relied on a number of facts, including: that Representative Graves' financial interest was only as a member of a class; that he publicly disclosed his financial interest; that the committee's minority staff made the actual witness selection, with limited input from the Representative; that the committee took no action in relation to the testimony, which related to the industry as a whole; and that the Representative did not personally benefit from the testimony. See Graves at 15-20.

On June 15, 2010, this Committee issued a Statement of Alleged Violations ("SAV") relating to Representative Maxine Waters' husband's financial interest in OneUnited Bank, a community development financial institution ("CDFI") that services her district and is a member of the National Bankers Association ("NBA"). In alleging

two violations of House Rules and one of the Code of Government Ethics, the SAV cited: that Representative Waters publicly disclosed her financial interest at issue; that her interest was only as a member of a class; and that her Chief of Staff performed the actions at issue without her direction or knowledge. Moreover, the SAV failed to: identify any actual benefit derived by Representative Waters from her actions; establish that her Chief of Staff undertook any effective actions on behalf of the institution; or conclusively establish that any actions were undertaken on behalf of the bank and not NBA, the trade association for 103 minority and women-owned banks, including OneUnited. Even if the facts as alleged by the SAV were accurate, however, they would not establish the existence of any wrong-doing.

In its analysis of both the legal standards and the underlying factual record at issue this Committee has adopted an approach that is sharply divergent and significantly harsher than the decision rendered in Graves and other relevant precedent. In light of the disparate treatment of Representative Waters the allegations cannot be reconciled with this Committee's precedent. The SAV relating to Representative Waters fails to establish facts constituting a violation and should be dismissed.

II. The SAV Fails to State Facts Constituting a Violation of House Rules or the Code of Government Ethics

Comm. Rule 19(f) mandates that each count of the SAV "shall contain a plain and concise statement of the alleged facts of such violation." This provision is intended to implement House Rule XI, Cl. 3(a)(2) which directs this Committee to make recommendations to the full House only after "notice and hearing" (emphasis added). Comm. Rule 22(c)(2) provides that a "Motion to Dismiss may be made on the grounds that the Statement of Alleged Violation fails to state facts that constitute a violation of the

Code of Official Conduct or other applicable law, rule, regulation, or standard of conduct.”

A. **The Committee's Analysis of This Matter is Inconsistent With Graves and Other House Precedent and Treats Representative Waters in a Disparate Manner.**

The Committee's failure to establish sufficient facts to constitute the alleged violations is demonstrated by reference to its Graves decision issued last year. In exonerating Representative Graves of all allegations, this Committee assessed a number of factors that also apply to this matter. Yet, this Committee now wields many of the same factors that it employed to clear Representative Graves in support of its allegations citing Representative Waters. The Committee has offered no explanation for this disparate treatment.

1. **Representative Waters Fully and Accurately Disclosed Her Financial Interest.**

In Graves, this Committee emphasized that a Representative's complete and accurate disclosure of his financial interest obviated the Office of Congressional Ethics' ("OCE's") concerns about "conflict of interest." As the Report noted:

[T]he House Ethics Manual recognizes that some actual conflicts of interests are inevitable: "[s]ome conflicts of interest are inherent in the representative system of government, and are not in themselves necessarily improper or unethical." Instead, Members are required to disclose assets based on the principle that conflicts of interest are best resolved by the political process. "The objectives of financial disclosure are to inform the public about the financial interests of government officials in order to increase public confidence in the integrity of government and to deter potential conflicts of interest.

Graves at 16 (citing House Ethics Manual at 251) (footnotes omitted). This Committee explained that public disclosure is the "preferred method of regulating possible conflicts on interest." (Emphasis added.)

Draft Memorandum of Points and Authorities
Page 3

Graves cites two additional ethics provisions with approval:

[P]otential conflicts of interest are best deterred through disclosure and the discipline of the electoral process. Other approaches are flawed both in terms of their reasonableness and practicality, and threaten to impair, rather than to protect, the relationship between the representative and the represented,

House Commission on Administrative Review of the 95th Congress, House Ethics Manual at 251 (quotation omitted); and:

A Member may often have a community of interests with the Member's constituency, and may arguably have been elected because of and to serve these common interests, and thus would be ineffective in representing the real interests of the constituents if the Member was disqualified from voting on issues touching those matters of mutual concern.

House Ethics Manual at 250.

In light of this guidance, this Committee's report stressed that Representative Graves and his wife had fully disclosed their interest in the entities in which the congressional witness was also an investor. Graves at 16. This Committee also noted that "the evidence shows that the House disclosure rules were effective, because this issue was immediately covered by the press." Id.

In this matter, the SAV acknowledges that "Respondent disclosed her husband's ownership of OneUnited stock on Respondent's Financial Disclosure Statement filed for calendar years 2004, 2005, 2006, and 2007." SAV ¶ 15. Representative Waters also disclosed her interest in a 2007 public hearing where Representative Barney Frank and Federal Deposit Insurance Corporation Director of Resolutions Sandra Thompson were present. See Preserving and Expanding Minority Banks: Hearing Before the Subcomm. On Oversight and Investigations of the H. Comm. on Financial Services, 110th Cong. 21-22 (2007)

Draft Memorandum of Points and Authorities
Page 4

Surprisingly, the SAV fails to acknowledge, as this Committee did in exonerating Graves, at 16, that Representative Waters' financial disclosures were similarly effective, because her meeting request on behalf of the National Bankers Association ("NBA") "was immediately covered by the press." See, e.g., Susan Schmidt, Waters Helped Bank Whose Stock She Once Owned, WALL STREET JOURNAL, March 12, 2009, at A6; Eric Lipton & Jim Rim Rutenberg, A Representative, Her Ties and a Bank Meeting, N.Y. TIMES, March 13, 2009, at A1; Binyamin Applebaum, Lawmaker Tried to Aid Bank Partly Owned by Her Husband, WASHINGTON POST, March 14, 2009, at A3. Nor does it offer any explanation – particularly in light of the clear guidance cited above – why Representative Graves' disclosure was sufficient to exonerate him while, disparately, Representative Waters' repeated, public disclosures were not.

2. Representative Waters' Financial Interest was Held as a Member of a Class.

In Graves, the Committee found that "Representative Graves' putative interest was not an interest unique to him but was instead an interest that he held as part of a large class of investors." This Committee relied on this determination to hold that he did not receive any improper financial benefit from his co-investor's testimony. Graves at 17.

Although the report does not provide a citation for this conclusion, long-standing precedent establishes that actions taken by a Member that may affect her interests as part of a larger class of shareholders do not violate House rules or ethical standards. In 1976, this Committee found that "where the subject matter before the House affects a class rather than individuals, the personal interest of Members who belong to the class is not such as to disqualify them from voting." See In the Matter of a Complaint Against Rep. Robert L.F. Sikes, H. Rep. 94-1364, 94th Cong., 2d Sess. 15 (1976) (quoting Cong Rec.

H 11594, 11595 (daily ed. Dec. 2, 1975) (rejecting point of order to disqualify Members holding New York City securities from voting on a bill to provide federal guarantees for those securities)).

In this matter, Representative Waters' husband's assets comprised privately held stock in OneUnited Bank consisting of approximately 0.10% all outstanding shares. This certainly compares favorably to what Graves describes as the Representative's wife's "minimal" ownership of the two companies at issue, totaling 0.17% and 0.125% respectively. Graves at 16. Remarkably, nowhere in the SAV does this Committee distinguish Representative Waters' similar "minimal" ownership or explain why it treats her personal interest as a member of a class differently than Representative Graves' identical interest.

Thus, even if this Committee were to hold that Representative Waters derived some benefit as a member of the class of shareholders of OneUnited, as a result of her actions -- an allegation Respondent strongly denies -- it would not be sufficient to establish an ethics violation, according to this Committee's analysis in Graves. Id. at 18 (exonerating Representative Graves from all charges, "even if Mr. Hurst's testimony benefited only the two companies in which Mrs. Graves was invested, [the Graves'] personal financial interest in either investment would have been affected as members of a class of investors and not as individuals.>").

Instead, the SAV focuses on the value of the OneUnited shares as a percentage of Representative Waters' and her husband's combined net worth. See SAV ¶ 16. Given that in Graves this Committee did not deem the percentage of net worth relevant to the

analysis, this finding relating to Representative Waters should be similarly irrelevant to the allegations.

3. Neither Representative Waters Nor Her Chief of Staff Took Any Tangible Action on Behalf of Either OneUnited Bank or the NBA.

In Graves, this Committee found that neither the Representative nor his committee “took any action in relation to Mr. Hurst’s recommendations.” Graves at 17. In reaching its decision, this Committee necessarily held that the invitation issued by the committee’s minority staff was not an “action.” This Committee also noted that “the final decision as to which individual was invited was left up to, and actually made the minority staff.” Id. at 19. Ultimately, this Committee concluded that Representative Graves’ involvement with the selection of the witness was not impermissible.” Id.

In this matter, the SAV asserts that the following events involving Representative Waters’ Chief of Staff constituted “active[] assist[ance]” for purposes of the alleged violations:

- a. an exchange totaling three emails with Representative Frank’s staff member, alerting them about a constituent’s [OneUnited’s] concerns;
- b. forwarding of a publicly-available draft of legislation, drafted by the Treasury Department and distributed widely by the Financial Services Committee, to Kevin Cohee, CEO of OneUnited;
- c. unsolicited receipt of an email from Mr. Cohee, requesting that the Chief of Staff print a document drafted at the request of another member’s staff, in preparation for Mr. Cohee’s meeting with that member’s staff; Representatives Waters’ office did not respond;

d. unsolicited receipt of an email from the Robert Cooper, Chairman-Elect of the NBA with the attachment of document requested by the Treasury Department; Representatives Waters' office did not respond;

e. an exchange of two emails with the Mr. Cooper relating to "Any update?";

f. unsolicited receipt of an email from Mr. Cooper titled "Thank you for all your hard work!"; Mr. Cooper testified that this was a general thank you and not connected to any specific actions by Representative Waters' office; see CSOC.WAT.TRANS.000579; Representative Waters' office did not respond;

g. unsolicited receipt of an email from Mr. Cooper titled "Checking in."; Representative Waters' office did not respond. SAV §§ 26-31.

This list comprises the entirety of the actions by Representative Waters' office alleged by the SAV to constitute a violation.

There are numerous, significant flaws with the SAV's "active assistance" allegation. First, in light of Graves, the SAV is silent on how exactly these actions constituted "impermissible . . . involvement." After all, and as discussed above, the Committee's own guidance acknowledges that Representative Waters' fully disclosed financial interest as a member of a class would not have disqualified her from involvement in these issues. Nor does the SAV allege that Representative Waters performed or had knowledge of any of her Chief of Staff's actions.

Compare this specific approach to this Committee's conclusory analysis in Graves exonerating him, in part, because "Representative Graves gave limited input as to who the minority staff should select to testify." Graves at 19. The Committee reached this conclusion without citing its own guidance that in matters relating to a member's

financial interest "advocating or participating in an action by a House committee requires added circumspection." House Ethics Manual at 237. Instead, the Committee cleared Representative Graves, in part, because his involvement was "limited" and his staff performed the bulk of the work at issue.

Here, in contrast, after the initial contact with Secretary Paulson (which is not the subject of any of the alleged violations), the SAV lists no activity by Representative Waters. Indeed, the only "action" that the SAV alleges Representative Waters performed was an omission: failing to "instruct[] her Chief of Staff . . . to refrain from assisting OneUnited." SAV ¶ 45. Even this allegation is contradicted by the record. To wit, Representative Waters' Chief of Staff told the OCE that Representative Waters had spoken to Representative Frank and subsequently told her Chief of Staff not to worry about OneUnited. As the OCE interview noted, she told him that, "I spoke to Barney. Don't worry about it." The Chief of Staff to Representative Waters interpreted that he need not work on the NBA issues that day." OCE Report 09-2121__000020. He also informed this Committee in September of October of 2008, "[Representative Waters] appeared to be very . . . comfortable that . . . whatever the issue was, if there was to be a resolution, that Barney would take . . . a look at it and make a decision . . . as the Chairman, whether or not it was something he wanted to get involved with." CSOC.WAT.TRANS.000485. This refutes this Committee's allegation that Representative Waters failed to instruct her Chief of Staff to refrain from assisting OneUnited. Other than that single, alleged omission, the SAV elucidates no other actions taken by Representative Waters.

Draft Memorandum of Points and Authorities
Page 9

In light of the blithe analysis performed by this Committee in Graves, e.g., simply stating that "Representative Graves gave limited input" into witness selection, without detailing what that input was (at 19), it is singularly unwarranted for this Committee to charge Representative Waters for the purported actions taken by her Chief of Staff.

Finally, the SAV makes no distinction between actions taken on behalf of OneUnited and for the NBA as a whole. Indeed items (d)-(g) on the above list involved contact with an OneUnited official who also served the NBA's chairman-elect.

In light of the disparate treatment afforded Representative Waters following Graves, these flaws in the purported actions constituting the allegations cannot serve as "plain and concise statement of the alleged facts of such violation" providing "notice" to Representative Waters. The SAV simply fails to proffer any allegations sufficient to constitute an ethics violation.

4. Representative Waters Derived No Benefit from Her Alleged Actions.

In determining that Representative Graves never "actually received a financial benefit" from his co-investor's testimony, this Committee closely examined the subject of the testimony's recommendations and emphasized the lack of "subsequent action" taken by the Small Business Committee. Graves at 17.

In this matter, the SAV adopts a far broader and harsher analysis. In essence, this Committee has decided that without OneUnited's receipt of funds from the Troubled Asset Relief Program ("TARP") on December 19, 2008, "Respondent's husband's financial interest in OneUnited would have been worthless. Thus, the preservation of the value of [the] investment in OneUnited personally benefitted Respondent." SAV ¶¶ 37, 38 (emphasis added).

This conclusion falls far short of the "concise and plain" explanation required of this Committee. First and foremost, the SAV fails to acknowledge that on October 31, 2008, OneUnited received a final private sector investment, which rendered the bank "Adequately Capitalized," and eligible for so-called TARP funds. See SAV ¶¶ 35, 36. This term of art refers to the capital ratio required by the FDIC and identifies the bank as not in danger of failing, even without TARP funding. See generally, Factsheet on Capital Purchase Program, United States Department of the Treasury (March 17, 2009), <http://www.financialstability.gov/roadtostability/CPFfactsheet.htm>. Indeed, according to the Treasury Department's Factsheet on Capital Purchase Program, "Participation [in the Capital Purchase Program] is reserved for healthy, viable institutions that are recommended by their applicable federal banking regulator." Id. (Emphasis added.) Thus, OneUnited would not have been eligible for TARP funds if it were in danger of failing and would not have failed had it not received such funds.

Accordingly, there is no factual basis for the SAV's assertion that absent TARP funding, OneUnited would have failed. Nor does the SAV assert that Representative Waters or her staff played any part in procuring the private funding that actually allowed OneUnited to continue operating in October of 2009.

Further, although the SAV notes that the value of Representative Waters' husbands' stock was \$175,000 in September of 2008 (before the TARP funding), it fails to acknowledge that the value was unchanged after OneUnited received the TARP funds in December. Thus, if TARP funding neither saved OneUnited nor increased its stock value, this Committee cannot establish that Representative Waters received any financial benefit as a result of her alleged actions.

Finally, the SAV does not establish that the House of Representatives took any action in response to Representative Waters' alleged actions. Compare Graves at 17. Although stated neither plainly nor concisely, the SAV apparently contends that Section 103(6) of the EBSA, a provision drafted by Representative Frank, benefitted OneUnited. SAV ¶ 42. While Representative Frank may have had OneUnited in mind when he drafted the language, his staffer testified that his office believed that up to 40 institutions could have been "impacted by the proposal." CSOC.WAT.TRANS.000191. In addition, the Deputy Director of the Capital Purchase Program, when asked if OneUnited qualified under this provision, stated that "[w]e don't classify transactions under those subsection. [One United] qualified for the December investment under the established CPP terms, which are used for all participants." CSOC.WAT.JW.00268 (emphasis added).

Most importantly, the SAV does not allege that Representative Waters or her staff took any actions on behalf of OneUnited or the NBA related to the aforementioned funding provisions. In light of the contradictory analysis in Graves and the SAV's omission of these facts, the allegations in the SAV fail to constitute a violation.

B. The Facts as Stated by the SAV Do Not Constitute Violations of House Rules and the Code of Government Ethics.

In light of Graves and the factual flaws detailed above, it is apparent that the SAV fails to assert facts constituting a violation. Moreover, this Committee's denial of Representative Waters' Motion for a Bill of Particulars has denied her full "notice" of which facts constitutes the alleged violations. The only solution for this harsh and disparate treatment is dismissal of these allegations.

1. Count I

House Rule XXIII, cl. 1 provides that "A Member . . . shall behave at all times in a manner that shall reflect creditably on the House." Without a tangible description of what constitutes behavior that "reflect[s] creditably on the House," Count I is simply too vague and ambiguous to be provable. Given the paucity of actions actually taken by Respondent and her office, the SAV literally relies on a handful of e-mails between her Chief of Staff and NBA/OneUnited personnel. Even its lone allegation specific to Representative Waters, that she should have instructed her Chief of Staff to refrain from assisting OneUnited, is refuted by record. Nor does the SAV's "preservation of value" allegation stand up under scrutiny.

In addition to these factual deficiencies, this Committee has provided no explanation as to how Representative Waters' and/or her Chief of Staff's actions failed to reflect creditably on the House or even what actions would constitute such non-creditable action. In light of these factual and legal deficiencies Count I should be dismissed.

2. Count II

House Rule XXIII, cl. 3 provides that "A Member . . . may not receive compensation and may not permit compensation to accrue to the beneficial interest of such individual from any source, the receipt of which would occur by virtue of influence improperly exerted from the position of such individual in Congress." As this Committee noted in Graves, "It must be shown that a Member improperly used his or her official position . . . and that the Member received a direct pecuniary benefit that resulted from [the actions]." Graves at 18. This Committee exonerated Representative Graves based on the facts that his co-investor was a legitimate witness, that the Representative had "limited input" into

his selection, and that Representative Graves did not receive "any benefit in connection with Mr. Hurst's testimony." *Id.*

As detailed above, the SAV plainly fails to establish both how Representative Waters improperly used her official position and/or derived any direct pecuniary benefit from her actions. In light of this Committee's precedent, absence of either factor is sufficient to exonerate her from this allegation.

3. Count III

The Code of Ethics for Government Service (72 Stat., Part 2, B12, H. Res. 175, 85th Cong.) (adopted July 11, 1958) provides;

[A]ny person in Government service should:

5. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept for himself or his family, favors or benefit under circumstance which might be construed by reasonable persons as influencing the performance of his governmental duties.

In Graves, this Committee held that establishing a violation under this provision "requires a showing that a Member improperly used his or her official position [in acting]." Graves at 20. Again, this Committee relied on Representative Graves' "limited involvement with the witness selection process" and the fact that his co-investor "met all of the reasonable and objective requirements the staff established for a witness." *Id.*

Grave's broad and highly-generalized conclusion poses a stark contrast to the SAV's detailed analysis of the emails at issue in this matter; this Committee cannot proffer any legitimate basis for such disparate treatment.

Nonetheless, the recitation of facts in the SAV does not establish how Representative Waters or her Chief of Staff "discriminate[d] unfairly by the dispensing of special favors

or privileges" to OneUnited or anyone else. The SAV makes no effort to describe how her Chief of Staff's email exchanges were "special favors" or "discriminated unfairly" against others; the SAV simply concludes that this is so. For example, the SAV ignores Representative Waters' long-standing interest and involvement in matters concerning minority banking issues, including members of the NBA. See, e.g., CSOC.WAT.TRANS.000355-358 (Testimony of Michael Grant, President of NBA, detailing Representative Waters' interest and involvement in minority banking issues). Instead, the SAV simply cites a handful of emails, removes all context and concludes that Representative Waters acted improperly.

In light of the aforementioned issues, the SAV fails to assert facts sufficient to constitute a violation of this provision.

III. Conclusion

The SAV is flawed both factually and legally. This Committee asserts that Representative Waters improperly used her official position to "preserve" her husband's investment in OneUnited Bank. Yet, after its exhaustive investigation it cannot identify a single active step taken by Representative Waters in furtherance of that goal. Given that she was able to arrange a meeting for the NBA with Treasury officials by simply calling Secretary Paulson, where are the imploring emails, phone call, or conversations one would expect to see if she were attempting to procure funds for OneUnited? The SAV's reliance on her purported failure to ask her Chief of Staff to refrain from acting – an assertion actually refuted by his testimony – is the only action cited by the SAV. This is simply insufficient to state facts constituting the alleged violation.

Legally, this Committee has ignored its own admonition, cited in Graves, that:

[P]otential conflicts of interest are best deterred through disclosure and the discipline of the electoral process. Other approaches are flawed both in terms of their reasonableness and practicality, and threaten to impair, rather than to protect, the relationship between the representative and the represented.

Graves at 15.

The stark differences in the Committee's lax approach to Graves and its harsh analysis in this matter create both the appearance and actuality of a double standard. Indeed the disparate approach to the two cases, which share so many similarities, is inexplicable. As such, Respondent simply request that this Committee to follow its own guidance in this area and dismiss the alleged violations.

Respectfully submitted this 12th day of July, 2010.

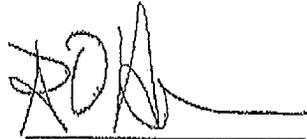


Stanley M. Brand
Andrew D. Hetman
Brand Law Group, PC
923 15th Street, NW
Washington, DC 20005

Counsel for Rep. Maxine Waters

CERTIFICATE OF SERVICE

The undersigned declares under penalties of perjury that on July 12, 2010, I hereby served a copy of the foregoing Memorandum of Points and Authorities in Support of the Motion to Dismiss the Statement of Alleged Violations, on Blake Chisam, Counsel, House Committee on Standards of Official Conduct:



Andrew D. Herman

EXHIBIT 5

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

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

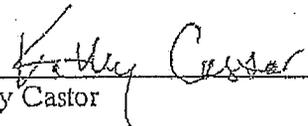
ORDER

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

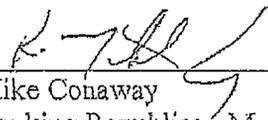
1. Count I of the Statement of Alleged Violation states facts that constitute a violation of the Code of Official Conduct, or another applicable law, rule, regulation, or standard of conduct.
2. Count II of the Statement of Alleged Violation states facts that constitute a violation of the Code of Official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

It is by the Investigative Subcommittee this 15th day of July,
2010, ORDERED

That the Motion is DENIED.



Kathy Castor
Chair



Mike Conaway
Ranking Republican Member

Copies to:

Stanley M. Brand, Esq.
Brand Law Group
923 Fifteenth Street, N.W.
Washington, D.C. 20005

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

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

MEMORANDUM IN SUPPORT OF ORDER

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

STANDARD OF REVIEW

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

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

¹ Motion to Dismiss the Statement of Alleged Violations (hereinafter Motion).

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

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

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

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

ANALYSIS

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

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

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

⁴ Standards Committee Rule 19(f).

⁵ Mem. in Supp. at 2.

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

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

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

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

⁶ *Graves*, at 18-20.

⁷ *Id.* at 11.

⁸ Statement of Alleged Violation at ¶¶ 1-10, 13-14.

⁹ *Id.* at 11.

¹⁰ *Id.* at ¶¶ 12.

¹¹ *Id.* at ¶¶ 20-22.

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

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

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

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

¹² *Id.* at ¶¶ 9, 20-23.

¹³ *Id.* at ¶¶ 24-31.

¹⁴ *Id.*

¹⁵ *Id.* at ¶ 36.

¹⁶ *Id.* at ¶ 37.

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

¹⁸ *Id.* at 3.

¹⁹ *Id.*

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

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

²⁰ *Id.* at 4

²¹ *Id.*

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

²³ 2007 Hearing.

²⁴ *Id.* at 1.

²⁵ *Id.* at 16-19, 72-73.

²⁶ *Id.* at 17-18.

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

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

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

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

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

²⁷ Mem. in Supp. at 2.

²⁸ *Id.* at 3-7

²⁹ *Id.* at 7-10.

³⁰ *Id.* at 10-12.

³¹ *Id.* at 3-4.

³² *Id.* at 5-6.

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

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

Respondent cites to the Standards Committee's conclusion that Representative Graves' involvement with the selection of the witness was "not impermissible" and then asserts that "the SAV is silent on how exactly [Respondent's and her Chief of Staff's] actions constituted 'impermissible . . . involvement'" and further asserts that "the SAV [does not] allege that [Respondent] performed or had knowledge of any of her Chief of Staff's actions."⁵³

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

⁵³ *Id.* at 7-8.

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

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

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

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

Never discriminate unfairly by dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.³⁸

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

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

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

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

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

³⁸ Code of Ethics for Government Service, section 5.

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

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

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

³⁹ Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, (hereinafter *Biaggi*) H. Rep. 100-56, 100th Cong. 2d Sess. 9 (Feb. 18, 1988) ("While the Committee does not argue, nor can it be determined, that Representative Biaggi would not have interceded on behalf of Coastal in the absence or because of Esposito's gratuities to the congressman, it is nevertheless clear that at a minimum, an appearance is raised that such was the case. Accordingly, the Committee concluded that such improper appearance supports a determination that Representative Biaggi violated clause 5 of the Code of Ethics for Government Service.").

⁴⁰ House Rule XXIII, clause 3.

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

⁴² 2008 *House Ethics Manual*, at 186.

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

⁴⁴ 2008 *House Ethics Manual*, at 17.

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

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

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

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

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

⁴⁷ *Graves* at 18-20.

⁴⁸ *Graves*, at 19.

⁴⁹ *Graves*, at 19.

⁵⁰ *Graves*, at 20.

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

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

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

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

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

⁵² Statement of Alleged Violation at 48.

⁵³ Statement of Alleged Violation at ¶¶ 45, 53, 59.

⁵⁴ *Id.* at ¶¶ 46, 54, 60.

⁵⁵ *Gingrich*, at 59-60.

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

⁵⁷ *Id.* at 126.

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

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

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

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

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

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

⁵⁹ *Gingrich*, at 56-60, and 78.

⁶⁰ *Gingrich*, at 60.

⁶¹ *Shuster*, at 49 (emphasis added).

⁶² *Id.* at 3F-3G.

⁶³ *Murphy*, at 4.

⁶⁴ *Id.* at 85.

⁶⁵ *Murphy*, at 4.

⁶⁶ *Carib News*, at 126.

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

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

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

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

⁶⁷ *Id.*

⁶⁸ *Id.*

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

⁷⁰ Mem. in Supp. at 11.

⁷¹ *Graves* at 17 (emphasis added).

⁷² Statement of Alleged Violation, ¶ 48.

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

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

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

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

⁷³ Statement of Alleged Violation ¶ 44.

⁷⁴ *Id.*

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

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

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

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

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

Count I of the Statement of Alleged Violation contains a plain and concise statement of the alleged facts that constitute behavior that fails to reflect creditably on the House in violation of clause 1 of House Rule XXIII. Count I of the Statement of Alleged Violation asserts that "Respondent's Chief of Staff's continued involvement in assisting OneUnited created an appearance that Respondent was taking official action for Respondent's personal benefit, which did not reflect creditably on the House."⁷⁸ Count I asserts that "Respondent's failure to instruct her Chief of Staff to refrain from assisting OneUnited after Respondent realized that she 'should not be involved' violated" House Rule XXIII, clause 1.⁷⁹

⁷⁶ 2008 *House Ethics Manual* at 16.

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

⁷⁸ Statement of Alleged Violation, ¶ 48.

⁷⁹ *Id.*, at ¶ 49.

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

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

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

⁸⁰ Mem. in Supp. at 13.

⁸¹ *Id.* at 9.

⁸² *Id.*

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

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

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

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

⁸³ Mem. in Supp. at 13.

⁸⁴ Statement of Alleged Violation, ¶ 41.

⁸⁵ *Id.* at 44.

⁸⁶ Mem. in Supp. at 11.

⁸⁷ Statement of Alleged Violation, ¶ 48.

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

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

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

House Rule XXIII, clause 3, prohibits Members from "receiv[ing] compensation and . . . permit[ing] compensation to accrue to the beneficial interest of such individual from any source, the receipt of which would occur by virtue of influence improperly exerted from the position of such individual in Congress."⁸⁸ A Member would violate this provision if the Member used the Member's "political influence, the influence of his position . . . to make pecuniary gains."⁸⁹ Moreover, pursuant to House Rule XXIII, clause 2, Members must adhere to the spirit as well as the letter of the House XXIII, clause 3.⁹⁰

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

⁸⁸ House Rule XXIII, clause 3.

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

⁹⁰ 2008 *House Ethics Manual*, at 186.

⁹¹ *Id.* at 14.

⁹² Statement of Alleged Violation at 48.

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

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

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

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

Under the Code of Ethics,⁹⁴ a federal official, including a Member, should:

Never discriminate unfairly by dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.⁹⁵

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

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

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

⁹⁵ Code of Ethics for Government Service, paragraph 5.

⁹⁶ *Biaggi*, at 9 (“While the Committee does not argue, nor can it be determined, that Representative Biaggi would not have interceded on behalf of Coastal in the absence or because of Esposito’s gratuities to the congressman, it is nevertheless clear that at a minimum, an appearance is raised that such was the case. Accordingly, the Committee

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

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

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

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

⁹⁷ *Id.* at 14-15.

⁹⁸ *Id.* at 15.

⁹⁹ *Sikes* at 3.

¹⁰⁰ *Id.* at 4.

¹⁰¹ Statement of Alleged Violation at ¶ 62.

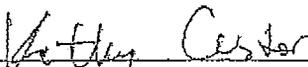
¹⁰² *Id.* at 6.

¹⁰³ Codes of Ethics, paragraph 5.

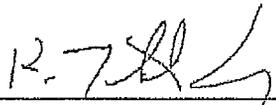
without a potential personal benefit, if the Member's actions raise the appearance of impropriety.¹⁰⁴

CONCLUSION

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



Kathy Castor
Chair



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¹⁰⁴ *Biaggi*, at 9 ("While the Committee does not argue, nor can it be determined, that Representative Biaggi would not have interceded on behalf of Coastal in the absence or because of Esposito's gratuities to the congressman, it is nevertheless clear that at a minimum, an appearance is raised that such was the case. Accordingly, the Committee concluded that such improper appearance supports a determination that Representative Biaggi violated clause 5 of the Code of Ethics for Government Service.").