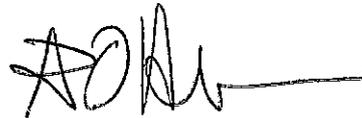


An Oral Hearing is requested on this Motion. Respondent also asks that the Committee acknowledge this request for an Oral Hearing in ruling on this motion and provide an explanation for such decision should it deny this request.

Respectfully submitted this 12th day of July, 2010.

A handwritten signature in black ink, appearing to be "SMB" followed by a horizontal line.

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:

A handwritten signature in black ink, appearing to read 'ADH', with a long horizontal flourish extending to the right.

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.)

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)

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[] assit[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.

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/CPFactsheet.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 EESA, 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 ignore Representative Waters long-standing interest and involvement in matters concerning minority banking issue, 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 of 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.

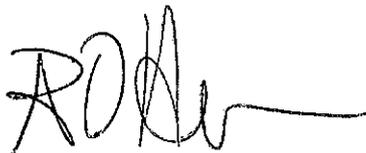
Legally, this Committee has ignored its own admonition, cited in Graves, that:

[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.

A handwritten signature in black ink, appearing to read 'S. M. Brand', with a long horizontal flourish extending to the right.

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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:

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Andrew D. Herman