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2010 NOV 29 PM 1:51 FEDERAL ELECTION COMMISSION
OF THE
OFFICE OF GENERAL UNITED STATES OF AMERICA
COUNSEL

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FEC MAIL CENTER

In the Matter of:

Charles B. Rangel

National Leadership PAC (C00302588)

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Rangel for Congress (C00302422)

Complaint

NATIONAL LEGAL AND POLICY CENTER, a corporation organized and existing under the District of Columbia Non-Profit Corporation Act and having its offices and principal place of business at 107 Park Washington Court, Falls Church, VA 22046, files this complaint with the Federal Election Commission pursuant to 2 USC § 437g.

The primary purpose of the National Legal and Policy Center, a charitable and educational organization described in section 501(c)(3) of the Internal Revenue Code, is to foster and promote ethics in government and public life.

Respondents include an individual candidate, a candidate's committee and a political action committee. The complaint documents numerous apparently improper payments of legal fees for Rep. Rangel by the National Leadership PAC during a period of time in which Rep. Rangel was under investigation by the U.S. House of Representatives Committee on Standards of Official Conduct.

Under certain circumstances, a member of Congress may pay for legal fees from his or her principal campaign committee or, pursuant to House ethics rules, set up a legal defense fund subject to a number of strict limitations.

Under no circumstances does the Federal Election Campaign Act of 1971, as amended, or FEC regulations permit an elected official to pay hundreds of thousands of dollars from a multicandidate political action committee to cover legal fees for that elected official.

Respondents

CHARLES B. RANGEL, 2354 Rayburn House Office Building, Washington, DC 20515, ("Rangel") represents the 15th Congressional District of New York.

NATIONAL LEADERSHIP PAC, P.O. Box 5577, New York, N.Y. 10027, (FEC Committee ID #C00302588) is leadership political action committee controlled by Rangel.

RANGEL FOR CONGRESS, P.O. Box 5577, New York, N.Y. 10027, (FEC Committee ID #C00302422) is the Congressional campaign committee supporting Rangel's re-election campaigns.

Facts

The facts supporting this complaint are all taken from materials publicly available, principally Federal Election Commission records and other public records. All material facts relied upon in this complaint are cited as to their source.

The ethical issues surrounding Rep. Charles Rangel grew out of a series of stories in major newspapers in 2008.¹

The U.S. House of Representatives Committee on Standards of Official Conduct voted on September 24, 2008 to establish an investigatory subcommittee to conduct an inquiry regarding Rep. Charles Rangel.²

Rangel retained Lanny Davis of Orrick, Herrington & Sutcliffe as Counsel. Rangel for Congress paid the Orrick firm \$121,436.63 on October 1, 2008.³

On January 5, 2009, Rangel for Congress paid the Orrick firm \$100,000.⁴

¹ "Rangel gets bargain on apartments; State, city regulations require they be used as primary residences," by David Kocieniewski, *New York Times*, July 10, 2008.

"Rangel's Pet Cause Bears his own Name; Firms with Business Before Panel Solicited," by Christopher Lee, *Washington Post*, July 15, 2008.

"Cash Cow: Rangel's shady money from tropic villa," by Isabel Vincent and Susan Edelman, *New York Post*, August 31, 2008.

"Tropical Deal: Scored No-Interest Mortgage on Villa," by Isabel Vincent and Maggie Haberman, *New York Post*, September 6, 2008.

"Another Power 'Trip' by Rangel: Defied Rule on Lobby \$\$ for Vacation," by Isabel Vincent, *New York Post*, September 14, 2008.

"Watchdog demands fed probe," by Isabel Vincent, *New York Post*, September 14, 2008.

² Statement of the Acting Chairman and Ranking Republican Member of the Committee on Standards of Official Conduct, September 24, 2008, <http://ethics.house.gov/>

³ Rangel for Congress, Report of Receipts and Disbursements, FEC Form 3, Pre-General report filed on October 23, 2008, Schedule B, Itemized Disbursements, page 26 of 47.

Also on January 5, 2009, the National Leadership PAC paid the Orrick firm \$100,000 for legal fees associated with Mr. Rangel's legal problems.⁵

Rangel later sought replacement counsel for Lanny Davis and retained the law firm of Zuckerman, Spaeder LLP.⁶

The National Leadership PAC is a leadership PAC set up by Rep. Rangel to serve as a non-connected multicandidate committee to make contributions to candidates for federal office. Over many years, the National Leadership PAC shared the same treasurer and address as Rangel for Congress but, under FEC regulations, the two political committees were considered unaffiliated.⁷

Throughout 2009, Rangel for Congress paid Zuckerman, Spaeder LLP as follows:

| | |
|-----------|---------------------------|
| 1/27/2009 | \$174,955.83 |
| 1/27/2009 | \$165,189.39 |
| 5/11/2009 | \$135,102.79 |
| 7/6/2009 | <u>\$236,159.36</u> |
| Total: | \$711,407.37 ⁸ |

At no point in 2009 did the National Leadership PAC pay any legal fees to Zuckerman, Spaeder LLP.

Throughout 2010, Rangel for Congress paid Zuckerman, Spaeder LLP as follows:

| | |
|-----------|-------------------------|
| 3/11/2010 | \$40,000. |
| 5/10/2010 | \$92,000. |
| 6/14/2010 | \$50,000. |
| 7/14/2010 | \$50,000. |
| 7/14/2010 | \$30,000. |
| 8/16/2010 | <u>\$20,000.</u> |
| Total: | \$282,000. ⁹ |

⁴ Rangel for Congress, Report of Receipts and Disbursements, FEC Form 3, April 15 Quarterly report filed on April 15, 2009, Schedule B, Itemized Disbursements, page 65 of 99.

⁵ National Leadership PAC, Report of Receipts and Disbursements, FEC Form 3, July 31 Mid-Year Report filed on July 31, 2009, Schedule B, Itemized Disbursements, page 41 of 88.

⁶ "Harlem Rep. Charlie Rangel paid Bill Clinton lawyer Lanny Davis six figures for ethics probe help," By James Gordon Meek, *Daily News*, November 25, 2008.

⁷ Campaign Guide for Nonconnected Committees, Federal Election Commission, 2008, page 1, Section 2: Leadership PACs..

⁸ <http://query.nictusa.com/cgi-bin/fecimg/?C00302422>

⁹ <http://query.nictusa.com/cgi-bin/fecimg/?C00302422>

The payment of legal fees to Zuckerman, Spaeder LLP by National Leadership PAC in 2010 jumped dramatically from the previous year when there were no such payments:

| | |
|-----------|--------------------------|
| 5/11/2010 | \$183,000. |
| 7/14/2010 | \$20,000. |
| 8/16/2010 | \$40,000. |
| 9/14/2010 | <u>\$50,000.</u> |
| Total: | \$293,000. ¹⁰ |

The fact that the National Leadership PAC paid \$293,000 to Rep. Rangel's principal law firm in 2010 compared to the smaller amount of \$282,000 paid to the same law firm by Rangel for Congress in the same year is a key fact in demonstrating that Rep. Rangel improperly paid his law firm in a major way throughout 2010.

Apparent Violations

The question as to how a Congressman under investigation by the Committee on Standards of Official Conduct may properly obtain funds to pay legal fees is answered both by the rules of the House of Representatives and by federal election laws and regulations.

While this complaint must focus on federal election law and FEC regulations, it is worth noting that the rules of the House are fully consistent with the Federal Election Campaign Act and FEC regulations.

The U.S. House of Representatives Committee on Standards of Official Conduct addresses the question of payment of congressional expenses, including some legal expenses, as follows:

Several points should be kept in mind in considering whether to use campaign funds to pay for congressional expenses:

The only campaign funds that a member may use to pay for congressional expenses are funds of his or her principal campaign committee -- not the funds of a leadership PAC or a multicandidate committee.

(emphasis in the original)

"Proper Use of Campaign Funds," Summary from the House Ethics Manual, Chapter Four¹¹

As Rangel for Congress was Rep. Rangel's principal campaign committee and the National Leadership PAC was both a leadership PAC and a multicandidate committee, House Rules would allow payment of legal fees under certain circumstances by Rangel for Congress but

¹⁰ <http://query.nictusa.com/cgi-bin/fecimg/?C00302588>

¹¹ <http://ethics.house.gov/Subjects/Topics.aspx?Section=149>

would not allow the payment of hundreds of thousands of dollars in legal fees by National Leadership PAC.

Despite this prohibition against the use of leadership PAC funds for legal fees, the National Leadership PAC paid Rep. Rangel's legal fees with its \$100,000 payment to Orrick, Herrington & Sutcliffe on January 5, 2009 and \$293,000 to Zuckerman, Spaeder LLP in 2010.

Thus at least \$393,000 appears to have been improperly spent by the National Leadership PAC for Rep. Rangel's legal fees owed to Orrick, Herrington & Sutcliffe and Zuckerman, Spaeder LLP in 2009 and 2010.

Since National Leadership PAC paid legal fees to a third firm, Oldaker, Belair & Wittie, during the period in which Rep. Rangel was being investigated, it is quite possible, if not likely that some portion of those legal fees were also improper. That legal firm had previously done legal work for both the principal campaign committee and the leadership PAC.

Since the entries provide little more than the law firm's name, address, amount of legal fees paid and the date of payments, it is impossible to determine what percentage of the fees went for work connected with the House investigation. Nevertheless, the Federal Election Campaign Act and FEC regulations require the National Leadership PAC to maintain appropriate documentation of any disbursements to pay legal fees so the payments to Oldaker, Belair & Wittie for legal fees in the investigation of Rep. Rangel should be readily determinable as distinguished from routine legal fees for purely National Leadership PAC legal matters.¹²

The distinction between principal campaign committees and leadership PACs is clearly laid out in the FEC Act and regulations as well as publications issued by the FEC to guide campaigns:

A leadership PAC is defined as a political committee that is directly or indirectly established, financed, maintained or controlled by a candidate or an individual holding federal office, but is not an authorized committee of the candidate or officeholder.¹³ 11 CFR 100.5(e)(6)

The fact that leadership PACs are not an authorized committee of the candidate or office holder is critical because it restricts the leadership PAC from paying for costs that could be paid by the candidate's authorized committee. This point was clearly made when the Federal Election Commission revised portions of its regulations to clarify the relationship between the authorized committee of a Federal candidate or office holder and committees which are associated with that same candidate or office holder, as is the case with a leadership PAC.

¹² 11 CFR 102.9(b) and 104.11(b)

See also 2 U.S.C. §433

¹³ Campaign Guide for Nonconnected Committees, Federal Election Commission, 2008, page

1.

See also 2 U.S.C. §434(i)(8)(B).

The Federal Election Commission summed up the relevant rule in its explanation and justification for its revision of 11CFR 100.5, Political Committees, published in the *Federal Register*:

The Commission concludes that since its first examination of leadership PACs, these committees cannot be assumed to be acting as authorized committees. Rather, these PACs are worthy of the same treatment as other unauthorized committees that operate without presumptions as to their status. To the extent that leadership PACs are used to pay for costs that could or should otherwise be paid for by the authorized committee, such payments are in-kind contributions, subject to the Act's contribution limits and reporting requirements.¹⁴

It follows that Rep. Rangel's leadership PAC, National Leadership PAC, to the extent that it pays for costs (in this case, legal fees) that otherwise should or could be paid for by the authorized committee (Rangel for Congress), is making an in-kind contribution to the authorized committee. Ergo, those in-kind contributions are "subject to the Act's contribution limits and reporting requirements."

The Act's contribution limits for a multicandidate political committee to a candidate's authorized committee is \$5,000 per candidate, per election. As stated in the FEC's Campaign Guide for Nonconnected Committees:

All contributions to federal candidates from non-connected committees during the 2007 to 2008 election cycle are subject to the following limits:

\$5,000 per candidate, per election, from a non-connected committee that qualifies as a multicandidate committee. 110.2(b)

This contribution limit applies to in-kind as well as direct contributions.¹⁵

Therefore, the National Leadership PAC's payment of \$393,000 in legal fees for Rep Rangel dramatically exceeded contribution limits mandated by 11 CFR 110.2(b).

Similarly, the National Leadership PAC's payments of hundreds of thousands of dollars of legal fees repeatedly violated the reporting requirements. None of the payments by National Leadership PAC properly identified the "Candidate Name," "Office Sought," "State" and "District" – the information required in the Schedule B, Disbursements section of the FEC reports which disclosed the disbursements to cover legal fees. An in-kind payment of legal fees for a candidate for Federal office requires that disclosure.

A review of other matters in which office holders or office seekers sought Advisory Opinions from the Federal Election Commission when issues as to payment of legal fees arose

¹⁴ *Federal Register*, Vol. 68, No. 230, Monday, Dec 1, 2003, page 67017.

¹⁵ 2 U.S.C. §431(8)(A)(i); 11 CFR 100.7(a)(1)(iii) and 100.8(a)(1)(iv).

found no instances in which the Commission approved of the use of leadership PAC funds for legal fees incurred by the candidate associated with a leadership PAC. In fact, several recent Advisory Opinions involved elected officials who had questions about legal fees and had both authorized committees and leadership PACs.¹⁶ In neither matter was there even a request to use leadership PAC funds.

To the degree that the issue of the National Leadership PAC improperly subsidizing Rep. Rangel's legal fees was raised, it appears to have been raised first in an article by reporter John Bresnahan in August 2009.¹⁷ The article cited the National Leadership PAC's payment of \$100,000 to Orrick, Herrington & Sutcliffe in January 2009.

The article continued:

When questioned whether the PAC payments were allowable, since FEC rules prohibit a leadership PAC's money from being used on a personal matter, including an ethics investigation, Rangel's office said the check was legitimate.

According to Rangel's office, National Leadership PAC is headquartered in one of the Harlem apartments, and since challenges were being raised to the legitimacy of Rangel controlling that many apartments, National Leadership PAC can pay part of the attorney fees.

"It was not for a personal matter," Rangel spokesman Emile Milne said in an email to POLITICO. "The \$100,000 paid to the law firm of Orrick, Herrington & Sutcliffe, LLP was for legal services the firm provided to National Leadership PAC ('NLP') in relation to inquiries concerning NLP's office space in New York."¹⁸

This defense of the use of National Leadership PAC to pay a significant portion of Rep. Rangel's legal fees is superficially plausible but wholly inadequate for a number of reasons.

First, the Committee on Standards of Official Conduct had no jurisdiction over National Leadership PAC. The Committee could only penalize Rep. Rangel and had no power to fine or in any other way sanction the PAC.

Second, the total amount of legal fees charged by Orrick, Herrington & Sutcliffe in this case was \$321,437:

¹⁶ Federal Election Commission Advisory Opinion 2008-07: Senator David Vitter, Use of campaign funds for legal and campaign expenses.

Federal Election Commission Advisory Opinion 2009-12: Senator Norm Coleman, Candidate may use campaign funds for certain legal expenses.

¹⁷ "Rangel pays lawyers \$1,000,000," by John Bresnahan, Senior Congressional Correspondent, Politico, August 3, 2009.

¹⁸ *Op cit*

Rangel for Congress

\$121,437

October 1, 2008

\$100,000

January 5, 2009

National Leadership PAC

\$100,000

January 5, 2009

The portion of the case involving National Leadership PAC was, by any yardstick, very minor. For example, the Statement of Alleged Violation issued by the Committee on Standards on June 17, 2010 listed 13 allegations.¹⁹ Only one of those 13 dealt in any way with the National Leadership PAC (Count X) and the PAC was far less culpable with respect to that count than Rangel for Congress since the PAC had benefitted for a far shorter period of time from the rent-stabilized apartment that the principal campaign committee.

Put another way, of the 273 numbered paragraphs in the Statement of Alleged Violation only 7 (numbers 234 through 240) deal directly with anything involving National Leadership PAC and each of those paragraphs also affect Rangel for Congress.

Yet, Orrick, Herrington & Sutcliffe received exactly \$100,000 in legal fees from National Leadership PAC as against \$221,437 from Rangel for Congress.

It strains credulity to believe that the law firm billed exactly \$100,000 for legal advice to National Leadership PAC for a matter that was so relatively minor, especially since the Committee on Standards of Official Conduct had no jurisdiction over the actions of the PAC.

Third, if the legal fees paid by National Leadership PAC to Orrick, Herrington & Sutcliffe in 2009 appear extremely out of proportion to the legal fee payments by Rangel for Congress, then the comparison for legal fee payments by the two groups in 2010 shows the payments wildly out of proportion.

As was noted earlier, in 2010 Rangel for Congress paid Zuckerman, Spaeder LLP \$282,000.²⁰ Also in 2010, National Leadership PAC paid Zuckerman, Spaeder LLP \$293,000.²¹ So the National Leadership PAC paid \$11,000 more than Rangel for Congress to the law firm which was representing Rep. Rangel in the investigation of his activities by the Committee on Standards of Official Conduct.

The explanation by Rep. Rangel that National Leadership PAC was paying legal bills because they were involved in the matter becomes absurd when the PAC was paying more in legal fees than Rangel for Congress in 2010.

¹⁹ In the Matter of Representative Charles B. Rangel: Statement of Alleged Violation, Committee on Standards of Official Conduct Investigative Subcommittee, adopted June 17, 2010

²⁰ <http://query.nictusa.com/cgi-bin/fecimg/?C00302422>

²¹ <http://query.nictusa.com/cgi-bin/fecimg/?C00302588>

Fourth, the fact that National Leadership PAC paid more than Rangel for Congress in 2010 for Zuckerman, Spaeder legal fees may reflect the fact that for the first time in years, Rangel had to spend much more for his re-election. As Open Secrets summarized the 2010 election finances, Rangel for Congress spent \$3,913,014 for the cycle as of October 13, 2010 but had raised just \$2,798,663.²² This more than a \$1.1 million shortfall, was explainable because Rangel was able to use nest egg accumulated in prior years by Rangel for Congress to pay the increased campaign costs and legal fees.

Had Rangel paid the Zuckerman, Spaeder legal fees which were paid in 2010 by the National Leadership PAC (\$293,000)²³, the Rangel for Congress Committee would have ended the 2010 cycle in the red. It goes without saying that financial convenience does not justify violating federal election law. It just may explain why the leadership PAC was tapped to pay legal fees that should have been paid for by the principal campaign committee.

Finally, the issue arose during as to why Rep. Rangel did not set up a legal defense fund. House rules allow members to carry a debt on their defense funds. There is little doubt that Rep. Rangel was well aware of the rules regarding payment of legal bills. Committee on Standards of Official Conduct Chair Zoe Lofgren said as much in the recent televised proceedings:

She also noted that Rangel had asked for official advice about ways to cover his mounting legal bills in September 2008, in March 2009, in October 2010 and received informal advice in August 2010.²⁴

Rep. Rangel's National Leadership PAC held a considerable amount of money in it (more than \$250,000 cash on hand with no debts) at the end of 2009.²⁵ Its major purpose in past years, as with most leadership PACs, was to dispense contributions to other congressional candidates. In 2010, National Leadership PAC gave just ten contributions of \$1,000 each to other candidates. Ironically, the PAC received some \$45,000 in refunds of contributions from candidates who apparently did not want to be seen to have taken contributions from a Congressman in the middle of an ethics scandal.²⁶

Another possible drawback of using a legal expense fund to cover legal fees was the restriction against taking funds from registered lobbyists.²⁷ Even a cursory examination of the major donors to National Leadership PAC reveals a heavy involvement of registered lobbyists.²⁸

²² <http://www.opensecrets.org/races/summary.php?id=NY15&cycle=2010>

²³ <http://query.nictusa.com/cgi-bin/fecimg/?C00302588>

²⁴ <http://thehill.com/homenews/house/129325-rangel-trial-done-in-one-day-jury-of-peers-mulls-verdict>

²⁵ National Leadership PAC, Report of receipts and Disbursements, FEC Form 3X, January 31 Quarterly Report (Year End), filed on January 29, 2010, Summary Page, Lines 8 and 10.

²⁶ <http://www.opensecrets.org/pacs/pacgot.php?cmte=C00302588&cycle=2010>

²⁷ Legal Expense Fund Regulations, Committee on Standards of Official Conduct, June 10, 1996, (9) "A Legal Expense Fund shall not accept any contribution from a registered lobbyist or an agent of a foreign principal."

See also: House Rule 25, clause 5(a)(3)(E).

²⁸ <http://www.opensecrets.org/pacs/pacgave2.php?cycle=2010&cmte=C00302588>

Conclusion

The gravamen of this complaint is quite straightforward: there is absolutely nothing in the Federal Election Campaign Act of 1971 or the Federal Election Commission Election regulations that would permit Rep. Rangel to use National Leadership PAC, his multicandidate leadership PAC, to pay close to \$400,000 in legal fees in connection with the House of Representatives ethics investigation against Rep. Rangel.

While there are carefully crafted regulations – both with the House of Representatives and the Federal Election Commission - allowing payment of certain legal bills by a candidate's or office holder's authorized committee, the FEC regulations draw a sharp distinction between an authorized committee and a leadership PAC.

The FEC statement cited earlier: "To the extent that leadership PACs are used to pay for costs that could or should otherwise be paid for by the authorized committee, such payments are in-kind contributions, subject to the Act's contribution limits and reporting requirements" has the effect of limiting the value of an in-kind contribution by the leadership PAC to the principal campaign committee to \$5,000.

The \$393,000 in legal fees paid by National Leadership PAC to Zuckerman, Spaeder LLP in the 2009-10 election cycle far exceeds the \$5,000 limit required by the Act and regulations.²⁹

The apparent "loophole" relied upon by Rep. Rangel that any payment by National Leadership PAC was for its own legal defense is not credible because the House of Representation has no jurisdiction over the PAC's actions. Moreover, the allegations which were central to the investigation and House proceeding's barely touch on the actions of National Leadership PAC as only a minor part of one of the thirteen allegations in the Statement of Alleged Violation. Through this pretext, in 2010 Rangel's PAC paid more legal fees (\$293,000) to Zuckerman, Spaeder LLP than did Rangel for Congress which is quite remarkable since the law firm barely mentioned National Leadership PAC in their 32-page written response to the Committee on Official Standard's Statement of Alleged Violation.³⁰

It is hard to imagine that any review of the law firm's billing records to National Leadership PAC would substantiate such a major and disproportionate emphasis of Rep. Rangel's legal counsel to such a relatively minor portion of the case.

In effect, Rep. Rangel's improper payment of legal fees appears to have been a matter of financial convenience. Certainly the Congressman did not seek an advisory opinion from the Federal Election Commission on whether his leadership PAC could pay such a major portion of

²⁹ 2 U.S.C. §431(8)(A)(1); 11 CFR 100.7(a)(1)(iii) and 100.8(a)(1)(iv).

³⁰ Statement of Charles D. Rangel in Response to the Statement of Alleged Violation, filed on July 28, 2010. This document was signed by five attorneys for Zuckerman, Spaeder LLP.

his legal fees. Nor have any past FEC Advisory Opinions ever approved such an arrangement. And such an arrangement flatly violates House of Representatives rules, as cited herein.

The fact that this matter involves such a significant case, the dollar amount of misallocated funds is so substantial, the respondent had two years of regular access to highly skilled legal counsel and many opportunities to review payment of legal fees with both the Committee on Standards of Official Conduct and the Federal Election Commission all combine to make this a matter deserving of a full and prompt investigation by the Federal Election Commission.

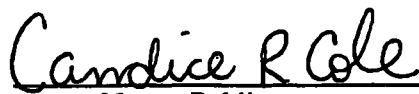
Anything less would undermine the confidence of the public in the integrity of campaign finance system.

Complainant, upon information and belief, swears under penalty of perjury that the statements and facts of this Complaint are true and correct to the best of his knowledge and belief.

NATIONAL LEGAL AND POLICY CENTER


Kenneth F. Boehm, Chairman

Subscribed and sworn before me this 29th day of November 2010.


Notary Public

Candice Cole
NOTARY PUBLIC
Commonwealth of Virginia
Reg. # 307562
My Commission Expires 8/31/2013

SEAL

My commission expires: *August 31, 2013*