

NEWS RELEASE

REP. CHARLES B. RANGEL

Ranking Democrat, Committee on Ways and Means

REP. PETE STARK

**Ranking Democrat, Ways and Means Health
Subcommittee**

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RANGEL AND STARK RENEW REQUEST TO SUBPOENA SCULLY & BADGER TO TESTIFY IN LIGHT OF NEW CRS REPORT

***Report makes it clear that laws were broken
in Medicare bill estimate coverup***

WASHINGTON, D.C. - Reps. Charles B. Rangel and Pete Stark today released a memorandum prepared by the Congressional Research Service that makes it clear that laws were violated in the Bush Administration's handling of Medicare cost estimates. Last month, Ways and Means Committee Chairman Bill Thomas had opposed issuing subpoenas for former CMS Administrator Tom Scully and Presidential aide Doug Badger, but the Chairman made it clear that he would support such subpoenas if it were shown that laws had been broken.

In light of the CRS report, Rep. Rangel and Rep. Stark have asked Chairman Thomas for a new hearing and to support subpoenas for both Mr. Scully and Mr. Badger. The text of the letter is as follows:

April 30, 2004

The Honorable Bill Thomas
Chairman
Committee on Ways and Means
Washington, D.C. 20515

Dear Mr. Chairman:

At our April 1st hearing on issues relating to the suppression of the Administration's Medicare cost estimates, you said that you would support issuing subpoenas for former CMS Administrator Tom Scully and Presidential aide Doug Badger if it was clear that laws had been broken.

Attached please find a Congressional Research Service memorandum that reports that, just considering the facts that already have been presented to the Committee, laws have been violated, including 5 U.S.C. 7211, sections 618 and 620 of P.L. 108-199, 42 U.S.C. 1317, and 5 U.S.C. 2302 (b)(8). Moreover, we are concerned that the abuses of last year with respect to the withholding of key requested information from Democratic members of Congress and the threats to Mr. Foster have compromised the institutional prerogatives of the Congress.

In reviewing the history of various statutes and case law designed to provide Congress with access to the information needed to legislate in an informed and effective fashion, the report states,

"Congress' right to receive truthful information from federal agencies to assist in its legislative functions is clear and unassailable. There are no countervailing "separations of powers" indications generally..." [page 2]

"Clearly, as stated by the Supreme Court, "[a] legislative body cannot legislate wisely or effectively in the absence of information regarding conditions which the legislation is intended to affect or change," and thus political gamesmanship must yield to the clear public interest of providing elected representatives in the Congress with accurate and truthful information upon which to effectively fashion the laws for the nation." [page 3]

"...it is recognized that "Congress must have the widest possible access to executive branch information, if it is to perform its manifold responsibilities effectively"..." [page 3]

In reviewing the statute and legislative history around the creation of the law formally establishing the Chief Actuary for Medicare, the CRS report concludes,

"Interfering with the statutory responsibilities of the Chief Actuary by instituting a "gag order" and threatening adverse personnel actions if the Actuary provides honest and truthful cost estimates to the Congress and its Members regarding the Medicare program and proposed legislation, thus not only misconceives the general ethical responsibilities of federal officials to the truth and to the promotion of the general public interest over narrow partisan interests and expediency, but also ignores the statutory nature, obligations and intended professional independence of the position of Chief Actuary." [pages 6-7]

Importantly, the memo exonerates Mr. Foster's compliance with the illegal threats and demands placed on him by his superior and others – saying that employees are generally advised to comply even with potentially illegal orders and to challenge them afterward.

In conclusion, it is clear that laws were broken. Indeed, the Administration's steadfast refusal even now to release the requested information raises serious questions as to the on-going violations of the spirit, if not the letter, of these laws.

Thus, in light of your repeated statements supporting additional action if laws had been violated, we respectfully request that you schedule another hearing on this matter at the earliest possible mutually agreeable time. Furthermore, we expect you would now support subpoenas for both Mr. Scully and Mr. Badger so that the Committee, Congress, and the American public can get answers to the growing number of questions with respect to the troubling incidents affecting passage of the Medicare Modernization Act.

Sincerely,

Charles B. Rangel, Ranking Democrat, Committee on Ways and Means
Pete Stark, Ranking Democrat, Ways and Means Subcommittee on Health

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