



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4406

DATE FILMED 6-19-87 CAMERA NO. 1

CAMERAMAN JMN

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BEFORE THE
FEDERAL ELECTION COMMISSION
OF THE
UNITED STATES OF AMERICA

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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

In the Matter of:

Rep. Jim McDermott;

Friends of Jim McDermott; and

Charles M. Williams

Respondents.

MUR

4406

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 8321 Old Courthouse Road, Suite 270, Vienna, Virginia, 22182, files this Complaint with the Federal Election Commission, in accordance with the provisions of 2 U.S.C. §437g(a)(1) in the belief that Respondents violated provisions of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§431, et seq.

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. In furtherance of that purpose, National Legal and Policy Center educates the public about the "Code of Ethics for Government Service," adopted by a Joint Resolution of Congress on July 11, 1958; and, it endeavors to assure compliance by governmental officials with the provisions of the Code and the laws of the United States. To that end, the

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apparent violations alleged herein are based upon reports filed by the Friends of Jim McDermott with the Federal Election Commission, published newspaper accounts, as described herein, and upon information and belief unless otherwise expressly so stated.

Respondents

REPRESENTATIVE JIM MCDERMOTT, 2349 Rayburn House Office Building, Washington, D.C., 20515-4707 (hereinafter "Rep. McDermott") is a Member of Congress, representing the 7th Congressional district of Washington.

FRIENDS OF JIM MCDERMOTT (C00239061), 710 9th Street, S.E., Washington, D.C. 20003 (hereinafter "the Committee") is a political committee established by Rep. McDermott to support his candidacy. It should not be confused with Rep. McDermott's principal campaign committee, Friends for Jim McDermott (C00223073), P.O. Box 21786, Seattle, WA 98111-3786.

CHARLES MAYNARD WILLIAMS, 2349 Rayburn House Office Building, Washington, D.C. 20515-4707, is a member of Rep. McDermott's Congressional staff who served as Treasurer of Friends of Jim McDermott at times material to the substance of this complaint.

FACTS

The facts supporting this complaint are all to be found in materials freely available to the public. An article ("McDermott Aide Gains Raises, Helps Campaign") which appeared in the May 20, 1996 issue of The Washington Times sets forth many of the key facts and is appended as an exhibit. That article relies upon information found in such publicly available documents as The Report of the Clerk of the House, Federal Election Commission records, and previously published accounts.

Mr. Williams has served Rep. Jim McDermott in two capacities. He is the congressman's administrative assistant, a congressional staff position which provides him with a reported annual salary of \$99,552. He has served as treasurer of Friends of Jim McDermott, a political position requiring that he fulfill the many legal and reporting duties required by the Federal Election Campaign Act. For the latter position, Mr. Williams received no monetary compensation from the political committee.

During the years 1994 and 1995, Rep. McDermott gave Mr. Williams raises in his congressional staff salary totaling \$17,635 despite no apparent changes in his official duties. Such substantial raises far exceed any possible cost of living increase or any normal incremental raise associated with length of service.

The apparent pattern of rewarding Mr. Williams' political service as Treasurer of Friends of Jim McDermott with additional compensation through congressional staff salary increases is underscored by the a \$724 bonus provided to Mr. Williams in September 1994. This matter was described in the May 20, 1996 Washington Times article, cited earlier, as follows:

"In September 1994, after a successful Fraioli/Jost fund-raiser, Mr. McDermott gave Mr. Williams a \$724 bonus by raising the share of Mr. Williams' salary paid by the District of Columbia panel from an annual rate of \$81,923 to \$90,605. Mr. Williams month of 'leave without pay' started a week after he received that paycheck."

The period of time covered by the "leave without pay" is reported to have been from October 6, 1994 to November 8, 1994. That period represents approximately the month before Rep. McDermott's election. Mr. Williams had served as campaign manager when Rep. McDermott was first elected to the House.

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The pattern of Rep. McDermott apparently rewarding Mr. Williams for political duties made on behalf of the Congressman by giving him bonuses or raises in congressional staff salary was repeated again in April 1995. The May 20, 1996 Washington Times account of the timing of this bonus was as follows:

"In April 1995, coinciding with another successful Fraioli/Jost campaign fund-raiser coordinated by Mr. Williams, the congressman again increased the aide's yearly pay rate to \$9,020 per month [\$108,234 per year] through Sept. 1. This raise netted Mr. Williams another \$8,014 bonus."

Overall, the pattern of financial rewards in congressional staff pay for increased duties (committee treasurer), campaign work (the preelection leave without pay) and successful fund raising events necessitating extra effort by Mr. Williams clearly demonstrates an apparent *quid pro quo* arrangement. Moreover, the fact that the salary increases were large, unrelated to any apparent change in congressional duties and could not reasonably be attributed to either cost of living or incremental seniority raises all add weight to the conclusion that Rep. McDermott apparently decided to finance his political committee professional operations by using his authority over congressional salaries to reward Mr. Williams.

APPARENT VIOLATIONS

The increased congressional salary payments by Rep. McDermott to Charles Williams, in apparent compensation for increased political duties associated with being Treasurer of Friends of Jim McDermott, constitute contributions to that political committee. The relevant regulation governing this type of contribution is set forth quite clearly in 11 CFR 100.7(a)(3) as follows:

The payment by any person of compensation for the personal services of another person if those services are rendered without charge to a political committee for any purpose, except for legal and accounting services provided under 11 CFR 100.7(b)(13) or (14), is a contribution.

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Applying the standard just cited to the facts in this case, the payments by Rep. McDermott of increased compensation to Mr. Williams constituted a contribution to the political committee. Mr. Williams duties as treasurer clearly constitute valuable personal services rendered to the campaign. As Mr. Williams is not an attorney, had duties which can be generally described as relating to fund raising and political operations, and had served as campaign manager to Jim McDermott all act to foreclose any possible argument that the personal services rendered fit the exception noted in the regulation.

The fact that Mr. McDermott apparently delegated oversight of Washington fund raising operations to Mr. Williams is underscored by the naming of Williams as treasurer of Friends of Jim McDermott, a Washington-based political committee distinct from the principal campaign committee, Friends for Jim McDermott, which was based in Seattle, Washington. This fund raising role delegation is further buttressed by Rep. McDermott's incredible statement in an article published on April 30, 1996 by the Washington Times that he knew nothing of the fund raising on his

behalf by the fund raising firm of Fraioli/Jost and therefore couldn't have had a conflict of interest in sitting in judgment of allegations advanced by Mr. Jost which had to be considered by the House ethics committee, of which McDermott was the ranking minority member. As treasurer, Williams clearly had fund raising oversight duties which further close the door to arguing that his role fit the regulatory exception.

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The contribution made by Mr. McDermott for the personal services of Mr. Williams to the Friends of Jim McDermott Committee came from funds over which Mr. McDermott had control and enormous discretion. The decision to compensate Mr. Williams for his valuable personal services to the Friends of Jim McDermott from congressional staff salary increases and/or bonuses instead of from the resources of the Friends of Jim McDermott was Rep. McDermott's. No other individual had, or could have had, that authority.

The contribution of Mr. Williams' personal services, paid for by Rep. McDermott, also represent a possible violation of 18 USC §603(a) which states:

It shall be unlawful for an officer or employee of the United States or any department or agency thereof, or a person receiving any salary or compensation for services from money derived from the Treasury of the United States, to make any contribution within the meaning of

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section 301(8) of the Federal Election Campaign Act of 1971 [2 USCS §431(8)] to any other such officer, employee, or person or to any Senator or Representative in, or Delegate or Resident Commissioner to, the Congress, if the person receiving such contribution is the employer or the employing authority of the person making the contribution. Any person who violates this section shall be fined under this title or imprisoned not more than three years, or both.

The apparent fact that Mr. Williams was compensated for his personal services mean that such services were a contribution and therefore not voluntary. The contribution of personal services, paid for by another, to one's employer is expressly prohibited by the statute just cited. The fact situation outlined earlier appears to state a *prima facie* violation of the statute.

Finally, the contributions of the compensated services of Mr. Williams to Friends of Jim McDermott are not in any way disclosed in any of the relevant reports filed by the committee. These failures to report contributions as well as the failure to list such contributions as in-kind contributions represent additional apparent violations within the jurisdiction of the Federal Election Commission.

CONCLUSION

It is beyond dispute that Rep. McDermott provided his administrative assistant, Mr. Charles Williams, huge increases in compensation in congressional salary at a time when Mr. Williams was undertaking time-consuming and important political services for Rep. McDermott's committee, Friends of Jim McDermott. It is also beyond dispute that Friends of Jim McDermott paid Williams no compensation for these valuable professional services.

Arguments that the increases in compensation to Mr. Williams, more than \$17,635 during 1994 and 1995, represent cost of living adjustments or incremental seniority raises are belied by the sheer size of the increases.

The timing of salary adjustments to fund raising events, preelection leave and additional political services to Friends of Jim McDermott presents an unmistakable pattern of compensation for personal services to a political committee, a classic *quid pro quo* arrangement.

Given the very compelling pattern of facts present in this case, the public is entitled to a full and prompt investigation. The public has lost faith in the integrity of its governmental institutions, including Congress, because all too often they have seen the public trust betrayed to advance personal interests. For a Member of Congress to blatantly reward political services to the Congressman's political committee by providing huge increases in congressional staff salaries is wrong,

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unethical, and illegal.

NATIONAL LEGAL AND POLICY CENTER

By: Kenneth Boehm
Kenneth Boehm
Chairman

Subscribed and sworn before me this 15th day of July, 1996.

State of Virginia
County of Fairfax

Frances B. Jeffrey
Notary Public

My Commission Expires 9-30-97



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McDermott aide gains raises, helps campaign

By George Archibald
THE WASHINGTON TIMES

Rep. Jim McDermott, top Democrat on the House ethics committee, gave large, unexplained pay increases to an aide who handles his campaign finances in an apparent scheme to use House funds to pay for political services.

Charles M. Williams, the Washington Democrat's \$99,552-a-year administrative assistant, also receives the congressman's campaign contributions and pays his political expenses as treasurer of Friends of Jim McDermott, a campaign committee based in the District.

Federal Election Commission reports and Mr. Williams' own yearly financial disclosure reports show he received no income for handling Mr. McDermott's campaign finances — a weighty and time-consuming chore.

However, Mr. McDermott arranged for Mr. Williams to receive increases in his House salary totaling \$17,635 for the years 1994 and 1995 even though there is no visible change in his official duties. These figures were gleaned from official House payroll records, which also tend to denote changes in official duties.

The records show that Mr. Williams' House salary rose by \$9,229 — from \$81,917 in 1993 to \$91,146 in 1994. Mr. Williams worked only 11 months for Congress that year.

Mr. McDermott arranged for

the aide to be placed on "leave without pay" from Oct. 6 to Nov. 8, which corresponded to the final month before Mr. McDermott's election.

Mr. Williams was Mr. McDermott's campaign manager when he first won his House seat in 1989. Both refused to respond to written inquiries from The Washington Times about House payroll discrepancies and apparent commingling of official and political activities.

House rules give lawmakers great leniency in setting staff pay levels within a total office allowance of \$900,000 to \$1 million for salaries and expenses. The rules stipulate that salaries must be "commensurate" with official duties. The top pay rate for House aides is currently \$108,234.

But House rules explicitly prohibit use of congressional funds to pay for political services and activities. But Mr. McDermott, formerly chairman of the House ethics committee and ranking Democrat of the panel since Republicans won control of the House in 1994, set up an elaborate payroll process that appears designed to circumvent the rules, House records show.

Mr. McDermott has been criticized by supporters of House Speaker Newt Gingrich for sitting in judgment on Democratic ethics complaints against the Georgia Republican while using the services of a political fund-raiser, Steven J. Jost, who orchestrated and



Photo by Bert Goulart/The Washington Times

Rep. Jim McDermott gave a pay raise to his administrative assistant, who also raises funds.

paid for legal drafting of the anti-Gingrich complaints submitted to the panel, formally called the House Committee on Standards of Official Conduct.

Mr. Williams, as Mr. McDermott's highest-paid House aide, coordinated political fund-raising

for the congressman with Mr. Jost. As campaign committee treasurer, he also arranged payments for services to Fraioli/Jost and other campaign vendors.

In the 1994 campaign cycle, Mr. McDermott spent \$275,259, mostly raised from political action committees, according to FEC reports. Last year, Mr. McDermott reported raising \$49,454 in contributions from political action committees and cash contributions of \$78,459. The McDermott campaign has missed the deadline for filing its first quarterly report for 1996, FEC officials said.

Until 1995, Mr. McDermott used his position on the House Ways and Means Committee and as a subcommittee chairman on the former House District of Columbia Committee to pay most of Mr. Williams' yearly salary from committee funds. Only \$6,222 was paid from the congressman's own congressional clerk-hire allowance.

In September 1994, after a successful Fraioli/Jost fund-raiser, Mr. McDermott gave Mr. Williams a \$724 bonus by raising the share of Mr. Williams' salary paid by the District of Columbia panel from an annual rate of \$81,923 to \$90,605. Mr. Williams' month of "leave without pay" started a week after he received that paycheck.

In January 1995, as Republicans phased out the D.C. panel and eliminated a third of Ways and

Means Committee staff positions, Mr. McDermott increased Mr. Williams' annual salary from \$60,000 to \$89,000. After this move, Mr. Williams was earning \$7,417 per month.

Members of Congress often compensate employees based on monthly or quarterly salary schedules. The compensation can shift on a monthly or quarterly basis depending on changes in the employee's official duties.

In April 1995, coinciding with another successful Fraioli/Jost campaign fund-raiser coordinated by Mr. Williams, the congressman again increased the aide's yearly pay rate to \$9,020 per month [\$108,234 per year] through Sept. 1. This raise netted Mr. Williams another \$8,014 bonus.

Without explanation in payroll records, Mr. Williams' salary fell to \$7,972 per month [\$95,660 per year] in September and October of that same year. On Nov. 1, 1995, Mr. McDermott increased Mr. Williams' salary to \$8,102 per month [\$97,230 per year].

In January, Mr. Williams' yearly pay was again changed to \$99,552. That amount equaled what Mr. Williams received from Mr. McDermott in 1995 when all of his pay changes were added together.

Mr. McDermott and Mr. Williams declined to explain the many changes in the aide's pay over a period when, according to payroll records, his official duties did not change.



FEDERAL ELECTION COMMISSION

Washington, DC 20463

July 9, 1996

Kenneth Boehm, Chairman
National Legal and Policy Center
8321 Old Courthouse Road, Suite 270
Vienna, VA 22182

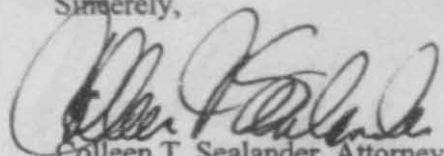
RE: MUR 4406

Dear Mr. Boehm:

This letter acknowledges receipt on July 2, 1996, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). The respondent(s) will be notified of this complaint within five days.

The respondents will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 4406. Please refer to this number in all future communications. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,


Colleen T. Sealander, Attorney
Central Enforcement Docket

Enclosure
Procedures

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 9, 1996

Charles M. Williams, Treasurer
Friends of Jim McDermott
710 9th Street, SE
Washington, DC 20003

RE: MUR 4406

Dear Mr. Williams:

The Federal Election Commission received a complaint which indicates that Friends of Jim McDermott ("Committee") and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 4406. Please refer to this number in all future correspondence.

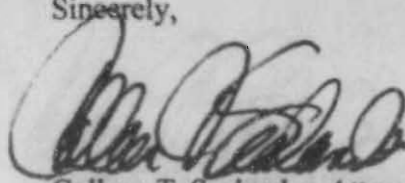
Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against the Committee and you, as treasurer, in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

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If you have any questions, please contact Alva E. Smith at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Colleen T. Sealander, Attorney
Central Enforcement Docket

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 9, 1996

The Honorable James A. McDermott
US House of Representatives
2349 Rayburn Building
Washington, DC 20515

RE: MUR 4406

Dear Representative McDermott:

The Federal Election Commission received a complaint which indicates that you may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 4406. Please refer to this number in all future correspondence.

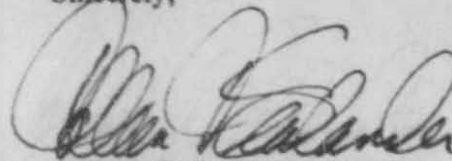
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Sincerely,



Colleen T. Sealander, Attorney
Central Enforcement Docket

Enclosures

1. Complaint
2. Procedures
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FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 9, 1996

The Honorable James A. McDermott
1810 East Lynn Street
Seattle, WA 98112

RE: MUR 4406

Dear Representative McDermott:

The Federal Election Commission received a complaint which indicates that you may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 4406. Please refer to this number in all future correspondence.

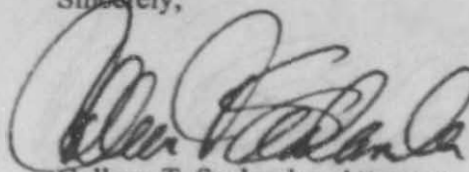
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If you have any questions, please contact Alva E. Smith at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Colleen T. Sealander, Attorney
Central Enforcement Docket

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

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STATEMENT OF DESIGNATION OF COUNSELMUR 4406NAME OF COUNSEL: JAMES L. O'DEA IIIFIRM: O'Dea & AssociatesADDRESS: 1003 K St. N.W.Suite 530WASHINGTON, D.C. 20001TELEPHONE: (202) 737-0200FAX: (202) 737-4135

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

7/12/96
DateCharles M. Williams
SignatureRESPONDENT'S NAME: Charles M. WilliamsADDRESS: 1916 17th NW #114
Washington D.C. 20009TELEPHONE: HOME (202) 483 5590BUSINESS (202) 225-3106FAX (202) 225-76197

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OFFICE OF GENERAL
COUNSEL
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JAMES L. O'DEA, III & ASSOCIATES

ATTORNEYS AT LAW
1003 K STREET, N.W.
SUITE 530 - CARPENTER'S BLDG.
WASHINGTON, D.C. 20001-4425

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OFFICE OF GENERAL
COUNSEL

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(202) 737-0200
FAX (202) 737-4135

JAMES L. O'DEA, III (D.C. & MASS.)
OF COUNSEL

BY FAX AND U.S. MAIL

July 24, 1996

9 CENTRAL STREET
300 WYMAN'S EXCHANGE
LOWELL, MASS. 01852
(508) 454-5491

DAVID S. KOVACH (D.C. & MD.)
THOMAS J. ODEN (D.C. & TENN.)

Alva E. Smith, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N. W.
Washington, D. C. 20463

RE: MUR 4406

Dear Ms. Smith;

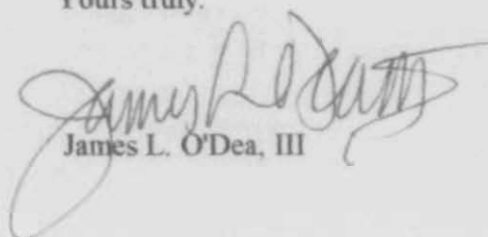
Pursuant to my phone conversation with you on Tuesday, since the Designation of Counsel was filed, I have been retained and so am requesting a short extension of the time for filing a response to the instant matter under review by your office.

The Commission forwarded the complaint in this MUR to the Respondent by letter dated July 9, 1996 and so we calculate that the response is due on or before July 27, 1996. Therefore, as I advised you by phone I am requesting a short extension to August 5, 1996 to file our response.

This extension is sought so that I might provide the Commission with a more learned response to the legal issues raised. The complaint raises factual and legal issues involving, among other things, the overlap of the Rules of the United States House of Representative and the Commission's own regulations. Not only the facts, but also these legal issues warrant the more detailed consideration that this brief would permit.

Thank you in advance for your consideration of this request. Please contact me if you need more information.

Yours truly,


James L. O'Dea, III

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 4406

NAME OF COUNSEL:

James L. O'Dea III

FIRM:

O'Dea & Associates

ADDRESS:

1003 K St. N.W. Ste 530Washington, D.C. 20001

TELEPHONE:

(202) 737-0200

FAX:

(202) 737-4135

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

Date

7/26/96

Signature

Charles Williams

TREASURER

Friends of Jim McDermott
Committee

RESPONDENT'S NAME:

Friends of Jim McDermott

ADDRESS:

710 9th St. S.E.WASHINGTON, D.C. 20003

TELEPHONE: HOME

(202) 488-5590

BUSINESS

(202) 225-3106

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COMMISSION
OFFICE OF GENERAL
COUNSEL

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 29, 1996

James L. O'Dea, III
JAMES L. O'DEA, III & ASSOCIATES
1003 K Street, N.W., Suite 530
Washington, D.C. 20001-4425

RE: MUR 4406
Friends of Jim McDermott
Charles M. Williams, Treasurer

Dear Mr. O'Dea:

This is in response to your letter dated July 24, 1996, requesting an extension until August 5, 1996, to respond to the complaint filed in the above-noted matter. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on August 5, 1996.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Alva E. Smith, Paralegal
Central Enforcement Docket

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demonstrating that the Commission should promptly dismiss this Matter under Review as to both of them. The 1979 amendments to the Federal Election Campaign Act preclude Commission jurisdiction over claims that contributions were made to a federally registered political committee using appropriated congressional clerk hire funds. In addition, the Commission should not begin reviewing the vast regime of Congressional salaries, raises, and bonuses, and the separate Congressional rules and statutes governing their payroll practices, under the aegis of Federal election law. To do so would open the Commission to a torrent of claims that are as unsubstantiated as this one.

I. THE 1979 AMENDMENTS TO THE FEDERAL ELECTION CAMPAIGN ACT EXPRESSLY PRECLUDE COMMISSION JURISDICTION OVER THESE CLAIMS

The Commission should promptly dismiss the complaint as against these Respondents because Congress expressly foreclosed Commission review of allegations that a Member of Congress used clerk hire funds (those appropriated funds authorized pursuant to 2 USC 92 for Congressional staff salaries and related expenses) to subsidize campaign activity. Specifically, the Federal Election Campaign Act Amendments of 1979, Pub. L. No. 96-187, 93 Stat. 1339, removed the spending of appropriated funds from that

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Act's definitions of "contribution" and "expenditure" by adding the phrase "by any person" to each of them. The accompanying House report explained these amendments' purpose was "to incorporate the {Federal Election} Commission opinion that the use of appropriated funds of the Federal Government is not a contribution [or an expenditure]. (The Federal Government is also excluded from the definition of person.)" Comm. on House Administration, Federal Election Campaign Act Amendments of 1979, H.R. Rep. No. 96-422, 96th Cong., 1st Sess. 7 (Sep. 7, 1979). See Winpisinger v. Watson, 628 F.2d 133, 141 n.34 (U.S.C.A.D.C., 1980) (explaining the 1979 amendments' purpose and effect).

Complainant has, in express terms, brought precisely the claim that the 1979 amendments have specifically precluded. Therefore, the Commission should dismiss the complaint pursuant to 11 C.F.R. sec. 111.9(b) because no "reason to believe" exists that Respondents violated any law or regulation within the Commission's purview.

II. THE COMMISSION SHOULD NOT PERMIT THIS COMPLAINT TO USHER IN A WAVE OF UNSUBSTANTIATED, POLITICALLY MOTIVATED SECOND-GUESSING OF CONGRESSIONAL PAY DETERMINATIONS

Not only has the Complainant sought to send the Commission

down a jurisdiction path it is precluded from following, but it has provided the Commission absolutely no factual basis for going there.

Indeed, innumerable Congressional staff persons, including Respondent Williams, have permissibly served, in their free time, as treasurers of committees affiliated with Members of Congress.

The House Ethics Manual explains that:

As long as employees complete those official duties required by the Member and for which employees are compensated from public funds, they are general free to engage in personal, campaign, or other nonofficial activities. *** {E}mployees may engage in campaign activities in their free time after official duties have been completed, while on annual leave or on leave-without-pay status.

Comm. on Standards of Official Conduct, House Ethics Manual, 102d Cong., 2d Sess. 200-01 (Apr. 1992).

Respondent Williams is a senior Congressional aide, his salary appropriately reflects his status as such, and there is no allegation that his role in Representative McDermott's campaign has in any way prevented him from completing his congressional duties. Indeed, in an abundance of caution and to make absolutely clear that no commingling of official and campaign activities occurred, Mr. Williams took a leave without pay status to ensure that his congressional salary did not subsidize his campaign work during the last month of the 1994 general election

campaign. There, this matter should end.

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Complainant has no legitimate reason to attempt to induce the Commission into micromanaging Congressional salary determinations by making subjective assessments whether Mr. Williams or any aide's duties are commensurate with his salary or raises or bonuses thereunto. Individuals who appropriately serve in an official and a campaign capacity may receive periodic raises and bonuses, just as any other Congressional staff persons. The newsclip on which Complainant based its charges itself explained that Members have "broad discretion" to set clerk hire compensation according to their subjective assessment of an aide's worth. For their part, courts have refused, based on the Constitutional separation of powers, to inquire into when a Congressional aide's campaign activity might start to call the level of his congressional salary into question. United States ex rel. Joseph v. Cannon, 642 F.2d 1373 (U.S.C.A.D.C., 1981). The Commission has no greater constitutional authority to undertake such an inquiry.

Finally, even a cursory review of House and Senate clerk hire payroll records reveals that Members constantly adjust staff and salaries to stay within the strict aggregate caps set

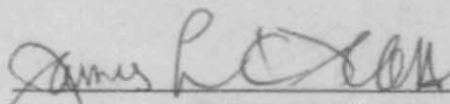
by law and for other equally legitimate purposes. The Commission should not entertain this effort to convert this fact of Congressional life into another basis for the filing of unsubstantiated and politically opportunistic complaints alleging FECA violations.

III. CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Commission expeditiously dismiss this Complaint as to both of them.

Respectfully submitted,

Dated: August 3 , 1996


James L. O'Dea, III, Esquire
O'Dea & Associates
1003 K Street, NW
Washington, D.C. 20001-4425
(202) 737-0200

Counsel for Respondents,
Friends of Jim McDermott and
Charles M. Williams, its treasurer

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

MAY 6 4 15 PM '97

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 4406
DATE COMPLAINT FILED: July 2, 1996
DATE OF NOTIFICATION: July 9, 1996
DATE ACTIVATED: September 18, 1996
DATE REASSIGNED: March 10, 1997

STAFF MEMBER: Tonda Phalen

COMPLAINANT: National Legal and Policy Center

RESPONDENTS: Rep. Jim McDermott
Friends of Jim McDermott
Charles M. Williams

RELEVANT STATUTES: 2 U.S.C. § 441a
2 U.S.C. § 434
11 C.F.R. § 100.7(a)(3)
18 U.S.C. § 603(a)

INTERNAL REPORTS CHECKED: 1994 and 1995 Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

On July 2, 1996, the National Legal and Policy Center ("Complainant") filed a complaint alleging that Rep. Jim McDermott, Friends of Jim McDermott, and Charles M. Williams (collectively, "Respondents") violated the Federal Election Campaign Act of 1971, as amended, (the "Act"). The allegations concern \$17,635 in bonuses and salary increases paid from congressional funds in 1994 and 1995 to Mr. Williams, who serves as the Administrative Assistant to Rep. McDermott and also served on his campaign in 1994.

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II. FACTUAL AND LEGAL ANALYSIS

According to the complaint and attached newspaper article, Mr. Williams received \$17,635 in bonuses and salary increases during the years 1994 and 1995. All funds concerned were paid from congressional funds. The Complainant questions the legitimacy of the additional compensation in light of the fact that Mr. Williams also served on Rep. McDermott's campaign (for which he took "leave without pay" from his congressional position for one month prior to the 1994 election), and served as treasurer of Friends of Jim McDermott, an authorized committee of Rep. McDermott's 1994 and 1996 campaigns.¹

The Complainant's allegation that Rep. McDermott improperly used congressional funds to subsidize political activity may be within the jurisdiction of another investigatory body, but is not within the Commission's jurisdiction. Therefore, this Office does not make any recommendations on the substance of that specific allegation (but see, *infra*). The Complainant further specifically alleges that Mr. Williams' services as campaign manager constituted a contribution to the campaign of Rep. McDermott, in violation of 18 U.S.C. § 603(a). Because the cited statute also is not within the Commission's jurisdiction, this Office makes no recommendation regarding this alleged violation.

Of the possible violations identified or implied by the complaint, only one is within the jurisdiction of the Commission. Although the Complainant cites only a definitional regulation (11 C.F.R. § 100.7(a)(3)), a possible violation based on the loosely constructed argument by the Complainant is that the funds paid to Mr. Williams would allegedly constitute an implicit excessive contribution to Rep. McDermott's campaign in violation of 2 U.S.C. § 441a(a)(1)(A)

¹ The campaign committee's disclosure reports for 1994 and 1995 show no disbursements to Mr. Williams.

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("No person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in aggregate, exceed \$1,000."). This allegation would also bring into play possible violations under the Act's reporting requirements (2 U.S.C. § 434), as the Committee did not report receipt of any such contributions by Mr. Williams, which was a specific allegation made by the Complainant.

Nevertheless, in order for the stated subject salary increases and bonuses to be an excessive contribution to the Committee or reportable by the Committee, they first must be a contribution within the meaning of the Act. Thus, the Complainant's argument is fatally flawed on its face, because the 1979 amendments to the Act expressly exclude the spending of appropriated funds from the Act's definitions of "contribution," incorporating the Commission's own opinion that the use of appropriated funds of the Federal Government is not a contribution. See, Advisory Opinion 76-34. As explained in the House Committee Report, "[t]he phrase 'by any person' was added to the definition of contribution to incorporate the Commission opinion that the use of appropriated funds of the Federal Government is not a contribution. (The Federal Government is also excluded from the definition of person.)" Committee on House Administration, Federal Election Campaign Act Amendments of 1979, H.R. Rep. 96-422, 96th Cong., 1st Sess. 7 (Sept. 7, 1979). See also, Winpisinger v. Watson, 628 F.2d 133, n.34 (D.C. Cir.), cert. denied 446 U.S. 929 (1980) ("The fact that the [Act] was modified by the [1979 Amendments] does not support judicial review of these allegations as the legislative history explains that the change was made because '[m]isuse of appropriated funds is a violation of Federal law and subject to enforcement by other agencies' than the Federal Election Commission." (citation omitted)).

Therefore, the Office of General Counsel recommends that the Commission find no reason to believe that Rep. Jim McDermott, Friends of Jim McDermott, and Charles M. Williams violated any provision of the Act on the basis of the complaint filed in MUR 4406.

III. RECOMMENDATIONS

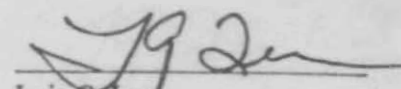
Find no reason to believe that Rep. Jim McDermott, Friends of Jim McDermott, and Charles M. Williams violated any provision of the Act on the basis of the complaint filed in MUR 4406.

Approve the appropriate letters.

Close the file.

Lawrence M. Noble
General Counsel

5/6/97
Date

BY: 
Lois G. Lerner
Associate General Counsel

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

Rep. Jim McDermott;)

Friends of Jim McDermott;)

Charles M. Williams.)

MUR 4406

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on May 12, 1997, the Commission decided by a vote of 5-0 to take the following actions in MUR 4406:

Find no reason to believe that Rep. Jim McDermott, Friends of Jim McDermott, and Charles M. Williams violated any provision of the Act on the basis of the complaint filed in MUR 4406.

Approve the appropriate letters, as recommended in the General Counsel's Report dated May 6, 1997.

Close the file.

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision.

Attest:

5-13-97
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat:	Tues., May 06, 1997	4:19 p.m.
Circulated to the Commission:	Wed., May 07, 1997	11:00 a.m.
Deadline for vote:	Mon., May 12, 1997	4:00 p.m.

bjr

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 22, 1997

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Kenneth Boehm, Chairman
National Legal and Policy Center
8321 Old Courthouse Road, Suite 270
Vienna, VA 22182

RE: MUR 4406 -- James A. McDermott;
Friends of Jim McDermott and Charles M.
Williams, Treasurer

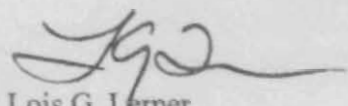
Dear Mr. Boehm:

On May 12, 1997, the Federal Election Commission reviewed the allegations in your complaint dated July 1, 1996, and found that on the basis of the information provided in your complaint, there is no reason to believe that the Respondents violated any provision of the Federal Election Campaign Act of 1971, as amended (the "Act"). Accordingly, on May 12, 1997, the Commission closed the file in this matter.

The Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,

Lawrence M. Noble
General Counsel

BY: 
Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 22, 1997

Charles M. Williams, Treasurer
Friends of Jim McDermott
710 9th Street, S.E.
Washington, D.C. 20003

RE: MUR 4406 -- James A. McDermott;
Friends of Jim McDermott and Charles M.
Williams, Treasurer

Dear Mr. Williams:

On July, 9, 1996, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act").

On May 12, 1997, the Commission found no reason to believe you or the Committee violated any provision of the Act, on the basis of the information in the complaint. Accordingly, the Commission closed its file in this matter.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact Tonda M. Phalen, the attorney assigned to this matter at (202)219-3400.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

9704382081C



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 22, 1997

The Honorable James A. McDermott
U.S. House of Representatives
2349 Rayburn Building
Washington, D.C. 20515

RE: MUR 4406 -- James A. McDermott;
Friends of Jim McDermott and Charles M.
Williams, Treasurer

Dear Representative McDermott:

On July, 9, 1996, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act").

On May 12, 1997, the Commission found no reason to believe you violated any provision of the Act, on the basis of the information in the complaint. Accordingly, the Commission closed its file in this matter.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact Tonda M. Phalen, the attorney assigned to this matter at (202)219-3400.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4406

DATE FILMED 6-19-57 CAMERA NO. 1

CAMERAMAN JMN

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