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October 9, 2007

William J. McGinley
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VIA HAND DELIVERY & FACSIMILE

Kate Belinski, Esquire
Attorney
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

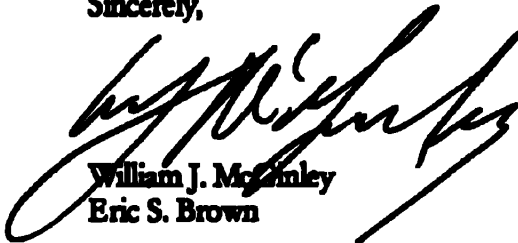
Re: MUR 5724
Mrs. Phyllis Feldkamp

Dear Ms. Belinski:

On behalf of our client, Mrs. Phyllis Feldkamp, please find attached our response and a signed affidavit. These documents are in response to your September 4, 2007 letter in the above referenced matter. The original copy of the affidavit will follow.

Please do not hesitate to contact us with any questions.

Sincerely,



William J. McGinley
Eric S. Brown

Attachments:
Reply Brief
Affidavit

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of
Phyllis Feldkamp

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MUR 5724

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SUBMISSION OF PHYLLIS FELDKAMP IN RESPONSE TO
SEPTEMBER 4, 2007 LETTER FROM THE OFFICE OF THE GENERAL COUNSEL

I. INTRODUCTION

Phyllis Feldkamp, through counsel, hereby responds to the September 4, 2007 letter from the Office of the General Counsel ("OGC"). In its letter, the OGC informed Mrs. Feldkamp that the OGC is reviewing information in connection with MUR 5724 to determine whether to make a recommendation that the Federal Election Commission ("Commission") find reason to believe ("RTB") against her in the above referenced matter. Mrs. Feldkamp is not currently a respondent in MUR 5724.

As explained fully below, Mrs. Feldkamp generally and specifically denies the allegations against her. There is no factual or legal basis for proceeding with an RTB finding against Mrs. Feldkamp and the Commission must close the file and take no further action.

II. BACKGROUND

Mrs. Feldkamp is a 76 year old widow who resides in Roseburg, Oregon. (P. Feldkamp Aff. ¶ 1.) Her husband, Barton (Bob), died in December 1988. (Id. ¶ 3.) Bob was the owner of Umpqua Dairy, a family run business since 1931. (Id.) Mr. Feldkamp left his entire estate to Mrs. Feldkamp.

Mrs. Feldkamp has three sons: James, Steven and Douglas. (*Id.* ¶ 2.) Steven and Douglas run the family dairy business today. (*Id.* ¶ 3.) James flew in an EA-6B as an electronic countermeasure officer off the aircraft carrier Midway during the first Gulf War. (*Id.*)

Over the years, Mrs. Feldkamp has provided her sons and their families with over one million dollars in support and gifts. (*Id.* ¶ 4.) The amounts of the gifts to each of her sons over the years have ranged from approximately \$2,000 to \$160,000. (*Id.*) All of her gifts to and support for her family are made voluntarily. Mrs. Feldkamp considers herself fortunate to be able to help her family and hopes to continue to do so in the future as long as she is able. (*Id.*)

III. LEGAL ANALYSIS

The Federal Election Campaign Act of 1971, as amended, and Commission regulations limit the amount an individual may contribute to an authorized committee of a candidate for federal office. During the 2004 election cycle, the contribution limit from an individual to an authorized committee was \$2,000 per election cycle. 11 C.F.R. § 110.1(b)(1) (2004). Commission regulations, however, permit candidates for federal office to make unlimited expenditures from personal funds. *See id.* § 110.10 (2004). The definition of "personal funds" includes, in relevant part, income from the candidate's stocks or other investments, bequests to the candidate, income from trusts established by bequest after the beginning of the election cycle of which the candidate is beneficiary, and "gifts of a personal nature that had been customarily received by the candidate prior to the beginning of the election cycle."¹ *See id.* §§ 100.33(b)(2)-(6) (2004). Thus, gifts to a candidate from

¹ While upholding the Act's limits for contributions from family members, the Supreme Court made clear that the potential for actual or apparent corruption from familial contributions is less than contributions from other supporters of the candidate. *Buckley v. Valeo*, 424 U.S. 1, 53 (1976); *see also* Commissioners Smith and Toner, Statement of Reasons (MUR 5138) at 2.

another family member that are personal in nature which have been customarily received prior to the applicable election cycle are not contributions under the Act and Commission regulations.²

The Commission's precedents demonstrate that the standards used to examine whether a gift received by a candidate from a family member constitutes a contribution or one that falls outside the federal campaign finance laws are contradictory, at best. In MUR 5138 (Ferguson for Congress) ("Ferguson"), the Commission found that funds withdrawn by a candidate from a trust established by his parents that were ultimately transferred to the campaign, constituted an excessive contribution.

However, in MUR 5321 (Minnesotans for Janet Robert) ("Robert"), an enforcement matter involving a similar fact pattern, the Commission voted to take no further action in the matter and dismissed the case. The disconnect between the results in the two enforcement matters compelled one Commissioner to file a Statement of Reasons lamenting the apparent unjust result reached in MUR 5138.

Because of the similarity between the facts of Ferguson and Robert, the results should be similar. For the foregoing reasons, the preferable result in each matter would have been to find excessive contributions. Yet even if no excessive contribution were found in either matter, the results would have been consistent. That they are not consistent may suggest that the Ferguson respondents are owed at least an apology.

I appreciate Commissioner McDonald's sympathy and support for what he may view as my tardy conversion to the "sauce for the goose is sauce for the gander" philosophy of enforcement. While Commissioners legitimately disagree over the application of law to similar but not identical fact patterns, the dramatic difference in outcome in these two MURs which bear at least a family resemblance cannot but undermine the ability of the Commission to seek and obtain penalties as significant as that secured in Ferguson. If the Commission cannot muster a consensus to treat intra-family fund transfers as significant, then I will have no choice but to join my colleagues who argue, in essence, that the corruption potential of such transfers is so insignificant as to make penalties for them unnecessary.

² We also note that Commission regulations provide that the payment of a candidate's personal expense by a family member does not constitute a contribution under the Act if the payment would have been made irrespective of the candidacy. See 11 C.F.R. § 113.1(g)(6) (2004).

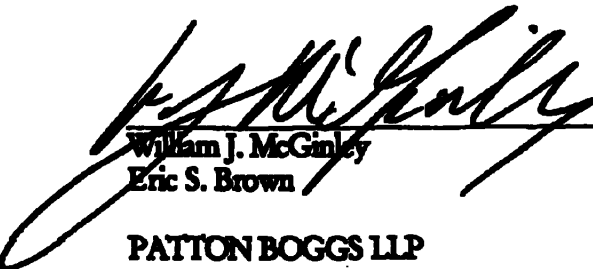
Commissioner David M. Mason, Statement of Reasons (MUR 5321) at 9. Since the family relationships between MUR 5321 and the instant matter are similar, the Commission must reach a consistent result and find no RTB against Mrs. Feldkamp.

Mrs. Feldkamp and her family are not the proper case for the Commission to reverse course yet again on intra-family gifts. In the instant case, Mrs. Feldkamp has a history of providing monetary gifts and other support to her three sons and their families. (P. Feldkamp Aff. ¶ 4.) As stated in her affidavit, Mrs. Feldkamp hopes to continue making generous gifts to her sons and their families as long as she is able to do so. (Id.) The Commission must vote consistent with MUR 5321 and find no RTB, close the file and take no further action with respect to Mrs. Feldkamp.

IV. CONCLUSION

For all the foregoing reasons, the Commission must find no RTB that Mrs. Feldkamp violated any provision of the Act, close the file, and take no further action.

Respectfully submitted,



William J. McGinley
Eric S. Brown

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October 9, 2007

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Phyllis Feldkamp

MUR 5724

AFFIDAVIT OF PHYLLIS FELDKAMP

Phyllis Feldkamp, being first duly sworn, states as follows:

1. My name is Phyllis Feldkamp. I live in Roseburg, Oregon and I am 76 years old. I make this affidavit in support of my response to the Federal Election Commission's letter dated September 4, 2007.

2. My sons are James Feldkamp, Steven Feldkamp, and Douglas Feldkamp.

3. My husband, Bob, passed away in 1988. He was owner of Umpqua Dairy, a family-run operation since 1931. Steven and Douglas run the dairy today. James flew in an EA-6B as an electronic countermeasure officer off the aircraft carrier Midway during the first Gulf War.

4. Over the years, I have provided my sons and their families over a million dollars in total support and gifts. Through time, the amounts of the gifts have ranged from about \$2,000 to the time I gave each of my sons about \$160,000. I am fortunate to be able to continue helping my family today and I hope to do so in the future, as long as I can.

5. I make donations to support _____ and I seek no recognition for them. For example, I anonymously donated _____

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_____ I seek to keep these donations anonymous and ask your help in
doing so.

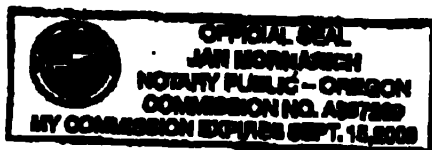
Further, the Affiant sayseth not.

Phyllis Feldkamp
Phyllis Feldkamp

STATE OF OREGON)
COUNTY OF DOUGLAS)

Sworn to and subscribed before me this 8th day
of OCTOBER, 2007

Jan Mornarich
Notary Public, State of Oregon
My Commission Expires: 9-15-09



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