



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 8759

DATE FILMED 4/6/89 CAMERA NO. 4

CAMERAMAN AS

89040742747

GUY VANDER JAGT, M.C.
CHAIRMAN

JOSEPH R. GAYLORD
EXECUTIVE DIRECTOR



320 FIRST STREET, S.E.
WASHINGTON, D.C. 20003

202-479-7000

OC# 817
Thw 2754

NATIONAL REPUBLICAN
CONGRESSIONAL COMMITTEE

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RECEIVED
FEDERAL ELECTION COMMISSION

October 28, 1988

Lawrence M. Noble, Esquire
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20004

Dear Mr. Noble:

This Complaint, by the National Republican Congressional Committee ("Complainant"), 320 First Street, S.E., Washington, D.C. 20003, against Nita Lowey and Nita Lowey for Congress (FEC ID # C00124273), 3 Beverly Road, Rye, New York 10580 is filed with the Federal Election Commission ("FEC") pursuant to 2 U.S.C section 437g(a) of the Federal Election Campaign Act of 1971, as amended ("the Act").

Nita Lowey ("Lowey"), a candidate for the U.S. House of Representatives from New York's 20th Congressional District has violated the Act by making loans to Nita Lowey for Congress (FEC ID # C00124273), Lowey's principal campaign committee ("the Lowey Committee"), which were not from personal funds. (11 C.F.R. section 110.10). The Lowey Committee has violated the Act by accepting the loans in violation of the Act. (11 C.F.R. section 110.9).

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I. FACTS

Lowey became a candidate for the U.S. House of Representatives on November 25, 1987. Prior to becoming a candidate, Lowey served as an Assistant Secretary of State for the State of New York. As an Assistant Secretary, she earned an annual salary of \$41,743 according to an Ethics in Government Act-Financial Disclosure Statement filed by Lowey with the U.S. House of Representatives. According to press accounts, Lowey resigned her position with the State of New York in December of 1987 to campaign for office.

To support her candidacy, Lowey loaned the Lowey Committee a total of \$350,000. The breakdown of when the loans were made, as reported to the FEC, is as follows:

\$ 50,000 on June 28, 1988
\$100,000 on August 14, 1988
\$100,000 on August 25, 1988
\$ 50,000 on September 8, 1988
\$ 50,000 on September 19, 1988

When called upon to disclose the source of the loans, Lowey provided to the press documents demonstrating

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that the loans came from a Citibank investor account jointly held with her husband which had a balance of \$841,706 as of March 10, 1988.

Since loans from the candidate must come from "personal funds" (i.e., assets which, under state law, the candidate had legal right of access to or control over, and with respect to which the candidate had either legal and rightful title or an equitable interest), and since those assets must be held at the time the individual becomes a candidate, it is imperative that the balance of the Citibank account as of November 25, 1987 be known. Lowey has steadfastly refused, however, to disclose what the balance of the account was on the day she became a Federal candidate.

In light of the level of income Lowey has reported on her Financial Disclosure Statement it appears highly unlikely that she had sufficient resources to contribute to the investor account after she became a candidate. Lowey's financial status and the financial status of her wealthy husband (who is a partner in a prominent Manhattan law firm), taken together with her refusal to disclose the November 25, 1987 balance of the account, leads to a conclusion that deposits were made by Lowey's husband to the

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investor account after the date she became a candidate.

As such, the amount deposited would not represent personal funds under the Regulations, and could not be the source of loans to the Lowey Committee. Therefore, Complainant, under knowledge, information and belief, contends that Lowey financed her campaign with monies which were not personal funds and were, therefore, in violation of the Act.

II. DISCUSSION

Regulations issued by the FEC permit a candidate to make unlimited contributions, including loans, from the candidate's personal funds to her authorized committee. 11 C.F.R. section 110.10(a). (Also see, FEC Advisory Opinions 1985-33 and 1984-60 1 Fed. Election Camp. Fin. Guide (CCH), Paras 5833 and 5802 (1985 and 1984, respectively). Personal funds are defined as - any assets which, under applicable state law, at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either legal and rightful title, or an equitable interest. (11 C.F.R. section 110.10(b)(1)). Additionally, a candidate may use a portion of assets jointly owned with his or her spouse as personal funds. The portion of the jointly owned assets

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that shall be considered personal funds of the candidate shall be that portion which is the candidate's share under the instrument(s) of conveyance or ownership. If no specific share is indicated by an instrument of conveyance or ownership, the value of one-half of the property used shall be considered as personal funds of the candidate. (11 C.F.R. section 110.10(b)(3)).

As noted above, Lowey has financed her campaign with \$350,000 worth of loans to the Lowey Committee from an investor account jointly held with her husband. Lowey is an individual with modest means, her husband is a wealthy Manhattan attorney. Lowey refuses to provide the balance of the joint account as of the date she became a candidate (i.e., the date for the determination of personal funds). Lowey will only provide the balance of the account as of March 10, 1988; a time three and one-half months after she began a candidate.

Complainant, under knowledge, information and belief, contends that Lowey financed her campaign with monies which were deposited in the investor account by her husband at a time subsequent to her becoming a candidate, and which would therefore not be personal funds under the

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definition of the Regulations. Use of such non-personal monies to finance her campaign represents a violation of the Act.

III. CONCLUSION

Nita Lowey has violated the Act by making loans to Nita Lowey for Congress which were not from personal funds. The Lowey Committee has violated the Act by accepting the loans in violation of the Act.

IV. PRAYER FOR RELIEF

Complainant requests that the FEC investigate these violations and enforce the Federal Election Campaign Act and the Commission's regulations.

Complainant further requests that the FEC seek the maximum fines for each violation as set forth in 2 U.S.C. section 437g, and take all steps necessary, including civil and injunctive action, to prevent respondents from continuing their illegal activity.

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V. VERIFICATION

The undersigned swears that the allegations and facts set forth in this complaint are true to the best of his knowledge, information and belief.



Joseph R. Gaylord
Executive Director
National Republican
Congressional Committee
320 First Street, S.E.
Washington, D.C. 20003

Subscribed and sworn before me this ^{Jh} ~~28~~ day of October, 1988.


Notary Public

My Commission Expires: ~~My Commission Expires June 14, 1991~~

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slm



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 31, 1988

SPECIAL DELIVERY

Joseph P. Gayland
Executive Director
National Republican Congressional
Committee
110 First Street, SE
Washington, DC 20003

RE: MUR 2754

Dear Mr. Gayland:

This letter acknowledges receipt on October 28, 1988, of your complaint against Jose Lowy For Congress and Gloria Padilla, as treasurer, alleging violations of the Federal Election Campaign Act, 2 U.S.C. 30101-30109, and the Federal Election Commission Regulations, 11 CFR 101.01-101.99. The complaint was received on October 28, 1988. The Commission will be notified of this complaint as soon as possible. The Commission will be notified as soon as the complaint is received at your post office. The Commission will be notified as soon as the complaint is received at your post office. The Commission will be notified as soon as the complaint is received at your post office.

The Commission will be notified as soon as the complaint is received at your post office. The Commission will be notified as soon as the complaint is received at your post office. The Commission will be notified as soon as the complaint is received at your post office.

[Handwritten Signature]
Associate General Counsel

Enclosure
Produced Pursuant to

89040744755



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 31, 1988

SPECIAL DELIVERY

Gloria Fassidomo, Treasurer
Nita Lowey For Congress
3 Beverly Road
Rye, NY 10580

RE: MUR 2754
Nita Lowey For
Congress and Gloria
Fassidomo, as treasurer

Dear Ms. Fassidomo:

This letter is to notify you that on October 23, 1988, the Federal Election Commission received a complaint which alleges that Nita Lowey For Congress and you, as treasurer, may have violated certain provisions of the Federal Election Campaign Act of 1971, as amended, and the regulations thereunder. Please refer to the attached letter for details.

The Act requires that certain contributions be reported to the Commission. It also prohibits certain contributions from being made to candidates for federal office. The Commission is currently reviewing the complaint and may request additional information from you. Please contact the Commission if you have any questions.

If you have any questions, please contact the Commission at (202) 456-9500. The Commission's office hours are from 9:00 a.m. to 5:00 p.m., Monday through Friday.

Very truly yours,
Federal Election Commission

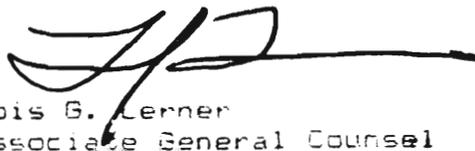
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If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

If you have any questions, please contact James Brown at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel



By: Lois G. Lerner
Associate General Counsel

Enclosures
Complaint
Procedures
Envelope

cc: Nita M. Lowey
3 Beverly Road
Rye, NY 10580

89040742757



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: *mwe* MARJORIE W. EMMONS/JOSHUA MCFADDEN *JM*

DATE: NOVEMBER 2, 1988

SUBJECT: MUR 2754
FIRST GENERAL COUNSEL'S REPORT
SIGNED NOVEMBER 1, 1988

The above-captioned report was received in the Secretariat at 3:14 p.m. on Tuesday, November 1, 1988 and circulated to the Commission on a ~~24-hour~~ no-objection basis at 4:00 p.m. on Tuesday, November 1, 1988.

There were no objections to the report.

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

EXPEDITED FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 2754
STAFF: J. Albert Brown

COMPLAINANT: National Republican Congressional Committee
Joseph R. Gaylord, Executive Director

RESPONDENTS: Nita Lowey for Congress Committee
Gloria Passidomo, Treasurer

Nita Lowey

SUMMARY OF ALLEGATIONS

The Complainant alleges that Nita Lowey and the Nita Lowey for Congress Committee ("the Lowey Committee") violated the Act through an illegal loan arrangement by which the candidate provided a total of \$350,000 in support of her candidacy from a Citibank investor account jointly held with her husband. While these loans were reported to the FEC, it is Complainant's position that such a large loan could not be made out of Lowey's personal funds, given that her annual income as Assistant Secretary of State for the State of New York was only \$41,743. It is Complainant's position that any jointly held assets are accessible for a candidate's use only if they were held at the time the individual became a candidate. Due to the fact that Ms. Lowey has refused to disclose the balance of the joint account upon her becoming a Federal candidate, Complainant feels such disclosure is necessary. The crux of the allegation is that Ms. Lowey's husband may have illegally

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placed funds into the joint account from his lucrative law practice, after the beginning of his wife's candidacy.

FACTUAL AND LEGAL ANALYSIS

The regulations provide that "candidates for Federal office may make unlimited expenditures from personal funds." See 11 C.F.R. 110.10. "Personal funds," as defined in the regulations do not seem to mandate that, when concerned with jointly held assets, the asset must have been held at the time the person became a candidate, rather that restriction seems applicable to a candidate's individually held assets. See 11 C.F.R. 110.10(b)(1). The only jointly held asset restrictions seem to be that the candidate is limited to his or her share of the asset under the instrument(s) of conveyance or ownership, or the value of one-half of the property if no specific share is indicated. See 11 C.F.R. 110.10(b)(3).

All persons, other than the actual candidate, are limited to contributions not to exceed \$1,000 in the aggregate with respect to any election for Federal office. See 2 U.S.C. § 441a(a)(1)(A). Outside of the jointly held asset provisions, such a limit of \$1,000 applies to spouses of candidates. Candidates and candidate committees cannot knowingly accept excess contributions without violated the Act. See 2 U.S.C. §441a(f).

In the present instance, the allegations concern a Citibank investor account jointly held with the candidate's husband. Even if the balance of the account as of the beginning of candidacy is irrelevant in determining the

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accounts availability for campaign loans, there still may be a violation relative to what share of the investor account constitutes personal funds of the candidate. The allegation states that as of March 10, 1988, the relevant account had a balance of \$841,706. It is possible that the loans involved here may exceed that portion of the joint account constituting Ms. Lowey's personal funds under the regulations.

The Office of the General Counsel's initial review of the complaint indicates that a violation of 2 U.S.C. § 441a(a)(1)(A) and 441a(f) or other sections of the Act and Regulations may have occurred in connection with the alleged transactions noted above. Therefore, the respondents must be given the opportunity to respond to the allegations before this Office can make recommendations regarding this matter.

Lawrence M. Noble
General Counsel

BY :


Lois G. Lerner
Associate General Counsel

Date

11/11/88

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GUY VANDER JAGT, M.C.
CHAIRMAN

JOSEPH R. GAYLORD
EXECUTIVE DIRECTOR



320 FIRST STREET, S.E.
WASHINGTON, D.C. 20003

202-479-7000

OGC# 877

NATIONAL REPUBLICAN
CONGRESSIONAL COMMITTEE

November 4, 1988

Lawrence M. Noble, Esquire
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20004

RE: Supplement to MUR 2754.

Dear Mr. Noble:

On October 28, 1988, the National Republican Congressional Committee ("Complainant"), 320 First Street, S.E., Washington, D.C. 20003, filed the Complaint in the above styled MUR against Nita Lowey and Nita Lowey for Congress (FEC ID # C00124273), 3 Beverly Road, Rye, New York 10580. The Complaint was filed with the Federal Election Commission ("FEC") pursuant to 2 U.S.C section 437g(a) of the Federal Election Campaign Act of 1971, as amended ("the Act").

The Complaint alleged that Nita Lowey ("Lowey"), a candidate for the U.S. House of Representatives from New York's 20th Congressional District, had violated the Act by making loans to Nita Lowey for Congress (FEC ID # C00124273), Lowey's principal campaign committee ("the Lowey

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Committee"), which were not from personal funds. (11 C.F.R. section 110.10). The Complaint also alleged that the Lowey Committee had violated the Act by accepting the loans in violation of the Act. (11 C.F.R. section 110.9).

I. FACTS

As stated in the Complaint, Lowey became a candidate for the U.S. House of Representatives on November 25, 1987. Prior to becoming a candidate, Lowey had served as an Assistant Secretary of State for the State of New York. As an Assistant Secretary, she had earned an annual salary of \$41,743 according to an Ethics in Government Act-Financial Disclosure Statement filed by Lowey with the U.S. House of Representatives. Additionally, according to press accounts, Lowey had resigned her position with the State of New York in December of 1987 to campaign for office.

To support her candidacy, Lowey loaned the Lowey Committee a total of \$350,000. The breakdown of when the loans were made, as reported to the FEC, is as follows:

\$ 50,000 on June 28, 1988

\$100,000 on August 14, 1988

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\$100,000 on August 25, 1988

\$ 50,000 on September 8, 1988

\$ 50,000 on September 19, 1988

When called upon to disclose the source of the loans, Lowey provided to the press documents demonstrating that the loans came from a Citibank investor account jointly held with her husband which had a balance of \$841,706 as of March 10, 1988. Yet up until last night, she refused to disclose the balance of the account on the date she became a candidate. It is now stated that the account from which the campaign loans were drawn had a balance of \$449,379 in it as of November 24, 1987. (See attached article from today's Gannett Westchester Newspapers). Though it was noted, however, that the "Loweys' salaries" continued to be deposited into the account after November 24, 1987. As previously noted, Nita Lowey had no salary to deposit after December, 1987.

II. DISCUSSION

As noted in the Complaint, Regulations issued by the FEC permit a candidate to make unlimited contributions, including loans, from the candidate's personal funds to her

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authorized committee. 11 C.F.R. section 110.10(a). (Also see, FEC Advisory Opinions 1985-33 and 1984-60 1 Fed. Election Camp. Fin. Guide (CCH), Paras 5833 and 5802 (1985 and 1984, respectively). Personal funds are defined as - any assets which, under applicable state law, at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either legal and rightful title, or an equitable interest. (11 C.F.R. section 110.10(b)(1)). Additionally, a candidate may use a portion of assets jointly owned with his or her spouse as personal funds. The portion of the jointly owned assets that shall be considered personal funds of the candidate shall be that portion which is the candidate's share under the instrument(s) of conveyance or ownership. If no specific share is indicated by an instrument of conveyance or ownership, the value of one-half of the property used shall be considered as personal funds of the candidate. (11 C.F.R. section 110.10(b)(3)).

As noted in the original Complaint, Lowey financed her campaign with \$350,000 of loans from the investor account which she held jointly with her husband. In order for the \$350,000 to represent "personal funds," the balance

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in the account had to be \$700,000 as of November 25, 1988, the date she became a Federal candidate. However, according to the statement issued last night by Lisa Meyer, Lowey's campaign manager, the investors account had only a balance of \$449,379.

With a November 24th balance of \$449,379, only one-half, or \$224,689.50, could be treated as "personal funds" for Lowey. Despite this, Lowey loaned the campaign \$350,000. Therefore, the difference between the amount loaned by Lowey (i.e., \$350,000) and the amount of the account to which she had legal right of access or control over (i.e., \$224,689.50) equals a loan and therefore a contribution from Lowey's husband. Since the loan from Lowey's husband was in the amount of \$125,310.50 (i.e., $\$350,000 - 1/2 \text{ of } \$449,379 \text{ (or } \$224,689.50) = \$125,310.50$); an amount substantially over the legal limit of \$1,000 per election, it represents an illegal contribution made in violation of the Act. Acceptance by Lowey and the Lowey Committee of the illegal contribution of \$125,310.25 represents a clear violation of the Act.

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III. CONCLUSION

Nita Lowey has violated the Act by making loans to Nita Lowey for Congress which were not from personal funds. Lowey's husband has violated the Act by making an illegal contribution of \$125,310.50. The Lowey Committee has violated the Act by accepting the illegal contribution in violation of the Act.

IV. PRAYER FOR RELIEF

As a result of Lowey's own admission that the investor account lacked a sufficient balance from which to borrow \$350,000, Complainant requests that the FEC immediately investigate these violations and enforce the Federal Election Campaign Act and the Commission's regulations.

Complainant further requests that the FEC seek the maximum fines for each violation as set forth in 2 U.S.C. section 437g, and take all steps necessary, including civil and injunctive action, to prevent respondents from continuing their illegal activity.

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V. VERIFICATION

The undersigned swears that the allegations and facts set forth in this Supplement are true to the best of his knowledge, information and belief.



Joseph R. Gaylord
Executive Director
National Republican
Congressional Committee
320 First Street, S.E.
Washington, D.C. 20003

Subscribed and sworn before me this th 4 day of November, 1988.


Notary Public

My Commission Expires: My Commission Expires Jan 14, 1991

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CAMPAIGN '88

Finances dominate latest congressional debate

By Matthew J. Doherty
Staff Writer

Democrat Nita Lowey and Republican Rep. Joseph DioGuardi traded angry charges on the issue of campaign finances in a televised debate last night in New Rochelle.

The debate on UA Columbia Cablevision brought together for the first and only time all four candidates in the 20th Congressional District, which covers most of southern and central Westchester.

Florence O'Grady, the Right to Life candidate, and Henry Levine, the Liberal nominee, were shut out of four previous debates.

In an exchange that shattered any pretense of civility, DioGuardi pressed Lowey on \$350,000 she has lent to her own campaign.

Lowey called DioGuardi's attack an attempt to "hide the fact" that he accepted \$57,000 in allegedly fraudulent contributions last year from employees of Crabtree Automotive of New Rochelle.

Lowey has stated repeatedly that her campaign loans were legally drawn from a joint account with her husband, Stephen. Federal election laws permit candidates to make loans to their campaigns and to draw up to half of all money in joint accounts for that purpose.

DioGuardi resurrected the issue last night. "Why can't you tell us that those joint accounts are going to be made available so that we can all see that there was at least \$700,000 in those accounts as of Nov. 25?" DioGuardi asked.

DioGuardi said Lowey had not released bank data on the source of the loans going back to November, when she filed her candidacy.

"Joe, you know it is lies and distortions and it's a smokescreen," Lowey replied. "The Gannett newspapers have all my records. We've always had joint accounts. All that information has been given to them and you know it."

DioGuardi said that was not true. The bank statement released previously by Lowey went back only to March of this year, he said.

After the debate, DioGuardi's top aide said that Lowey lied on the air about her loan disclosures and that she did not release information dating back to November.

"I'm officially accusing her of lying," said Kieran Mahoney.

Lowey's campaign manager, Lisa Meyer, said later that the candidate had offered to disclose bank statements back to November, but the statements were not requested by the news media.

Gannett Westchester Newspapers request that Nita

Lowey released data on three joint bank accounts as of Nov. 24, 1987.

The assets in the three joint accounts totaled \$789,403, Meyer said. The account from which the campaign loans were drawn had \$449,379 in it Nov. 24. Meyer said the Lowey's salaries have been deposited for years in the account and continued to be deposited into the account after Nov. 24.

By March 10, 1988, the account totaled \$841,706, as Lowey dis-

closed previously. The loans were made from June 28 to Sept. 19.

When given a chance to speak, Levine said candidates have focused too much on campaign finances and ignored the homeless.

"It is getting cold out there every night. It is too cold for them to sleep in the park. It is too cold for them to sleep in parked cars or in doorways," Levine said. "We don't have a federal housing program, we don't have a state hous-

ing program, we don't have a housing program."

O'Grady said that she is one-issue candidate but added the "continuum of life from conception to natural birth" is her greatest concern.

On other issues:
 ■ DioGuardi and O'Grady the death penalty for drug kingpins who commit murder. Lowey and Levine do not.

■ On taxes, Lowey and DioGuardi don't want them raised



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 10, 1988

Gloria Passidomo, Treasurer
Nita Lowey For Congress
3 Beverly Road
Rye, NY 10580

RE: MUR 2754
Nita Lowey For
Congress and Gloria
Passidomo, as treasurer

Dear Ms. Passidomo:

On October 31, 1988, you were notified that the Federal Election Commission received a complaint from Joseph R. Gaylord, the Executive Director of the National Republican Congressional Committee, alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time you were given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification.

On November 7, 1988, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information.

If you have any questions, please contact Jim Brown, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

cc: Nita Lowey

Enclosure

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glenn



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 10, 1988

Joseph R. Gaylord
Executive Director
National Republican
Congressional Committee
320 First Street, S.E.
Washington, D.C. 20003

RE: MUR 2754

Dear Mr. Gaylord:

This letter acknowledges receipt on November 7, 1988, of the supplement to the complaint you filed on October 28, 1988, against Nita Lowey and Nita Lowey for Congress. The respondents will be sent copies of the supplement. You will be notified as soon as the Federal Election Commission takes final action on your complaint.

Sincerely,

Lawrence M. Noble
General Counsel

A handwritten signature in black ink, appearing to read "Lois G. Lerner", is written over a horizontal line.

BY: Lois G. Lerner
Associate General Counsel

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plm

STATEMENT OF DESIGNATION OF COUNSEL

MUR 2754

NAME OF COUNSEL: ROBERT BAILEY

ADDRESS: PERKINS COLE
SUITE 1200

1110 VERMONT AVE. N.W.

TELEPHONE: (WASHINGTON DC 20005)
(202) 887-9030

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.

11-14-88
Date

[Signature]
Signature

RESPONDENT'S NAME: Mrs LOWERY F.R. CONGRESS

ADDRESS: 65 COURT ST.
WHITE PLAINS N.Y. 10601

HOME PHONE: (914) 967-7742

BUSINESS PHONE: (914) 683-3950

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20461

November 28, 1988

Robert F. Bauer
Perkins Coie
1110 Vermont Avenue, N.W.
Washington, D.C. 20005

RE: MUR 2754
Nita Lowey for Congress

Dear Mr. Bauer:

This is in response to your letter dated November 18, 1988, which we received on November 21, 1988, requesting an extension until December 16, 1988, to respond to allegations that your client violated certain sections of the Federal Election Campaign Act. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on December 16, 1988.

If you have any questions, please contact Jim Brown, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

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PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
1110 VERMONT AVENUE, N.W. • WASHINGTON, D.C. 20005 • (202) 887-9030

December 16, 1988

08 DEC 16 PM 4:19

Lawrence M. Noble
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 2754 - Nita Lowey for Congress and Gloria
Passidimo, as Treasurer

Attention: Jim Brown

Dear Mr. Noble:

Enclosed is the reply of the above-referenced Respondents to the Commission's notification that a complaint had been filed against them in MUR 2754.

The response refers to an affidavit by Stephen Lowey. We were unable to obtain the executed copy of the affidavit in time to submit it to you today. We have, however, attached an executed facsimile of the affidavit which Mr. Lowey intends to submit. As soon as the originally executed affidavit is received, we will have it hand delivered to your offices.

If you have any questions or need additional information, please do not hesitate to contact the undersigned.

Very truly yours,



Robert F. Bauer
B. Holly Schadler
Counsel for Respondents

0529E

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PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
1110 VERMONT AVENUE, N.W. • WASHINGTON, D.C. 20005 • (202) 887-9030

December 16, 1988

Lawrence M. Noble
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Attention: Jim Brown

Re: MUR 2754 - Nita Lowey for Congress
and Gloria Passidimo, as Treasurer

Dear Mr. Noble:

The Nita Lowey for Congress Committee (the "Committee"), and Gloria Passidimo, as Treasurer (collectively referred to hereafter as "Respondents"), hereby reply through Counsel to the Commission's notification that a complaint has been filed against them by the National Republican Congressional Committee ("NRCC").

The Complaint

The Complaint alleges that Nita Lowey, a Member of the U.S. House of Representatives from New York's 20th Congressional District, violated the Federal Election Campaign Act of 1971, as amended ("FECA"), 2 U.S.C. §§ 431 et seq., by making loans to the Committee which were not drawn from "personal funds." Further, the Complaint alleges that the Committee violated the FECA by accepting these loans.

More specifically, in its Complaint, the NRCC alleges that Mrs. Lowey had insufficient "personal funds" in an account held jointly with her husband, Stephen Lowey, for her to make loans totaling \$350,000 to the Committee. The NRCC concludes that because the balance in the account from which the campaign loans were drawn was \$449,379 as of November 24, 1987, the day before Mrs. Lowey became a candidate, only \$224,689.50, or fifty percent of that amount, was available for use by Mrs. Lowey as personal funds. Any amounts in excess of this figure are presumed by the NRCC to be prohibited contributions from her husband.

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These are groundless assertions. In fact, the personal funds available to Mrs. Lowey to loan to her campaign were far in excess of \$350,000.

The Law

Federal Election Commission ("FEC") regulations provide that a candidate may make unlimited contributions, including loans, from the candidate's "personal funds" to her authorized committee. 11 C.F.R. § 110.10(a); see also Advisory Opinions 1984-60 and 1985-33, 1 Fed. Election Camp. Fin. Guide (CCH) ¶¶ 5802 and 5833. Personal funds are defined as any assets which the candidate has "legal right of access to or control over" under applicable state law, and with respect to which the candidate has either legal or rightful title or an equitable interest at the time he or she becomes a candidate. 11 C.F.R. § 110.10(b)(1). Further, if a candidate for office is "in a position to exercise control over funds" of an immediate family member before becoming a candidate, these funds are personal funds not subject to the contributions applicable to members of the candidate's family. Buckley v. Valeo, 424 U.S. 1, 51, n.57 (1976) (quoting Cong. Rep. No. 93-1438, 93rd Cong., 2d Sess. at 58 (1974)).

Discussion

In this case, Mrs. Lowey clearly had sufficient "personal funds" available to her on November 25, 1987, the date she became a federal candidate, to make loans of \$350,000 to the Committee through September 19, 1988. As of that date, Mrs. Lowey held approximately [REDACTED] in securities in her name alone. In part, this amount reflects money, approximately [REDACTED] that Mrs. Lowey inherited upon her mother's death in 1981. Mrs. Lowey both controlled and held legal title to these funds at the time she announced her candidacy.

In addition, the Loweyes held approximately [REDACTED] in jointly owned money market accounts as of December 1987.*/
As stated in the attached Affidavit, since they were married in 1961, the Loweyes have always deposited their respective salary checks to jointly held checking accounts. They have maintained

*/
This amount does not include the value of the Loweyes' home (valued at \$1.5 million in February of 1987) which is owned by the Loweyes as joint tenants or Mr. Lowey's partnership interest in his law firm. Including these assets, the Loweyes' total combined net worth as of December 1987 was approximately [REDACTED]

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a substantial portion of their savings in jointly held bank accounts or money market funds. They have also had separate securities accounts. They have always treated all of their assets as jointly owned. This has been an established custom of twenty-seven years. Both Nita and Stephen Lowey have drawn on these assets as need arose. The Loweyes did not deviate from this practice in anticipation of or during Mrs. Lowey's campaign for Congress.

Under New York State law, assets held jointly in a banking organization are considered to be owned entirely by each joint tenant. N.Y. Banking Law § 675 (McKinney 1971 & 1988 Supp.); 3 NYCRR §§ 15.1 and 15.3 ("(a) that such deposit [into a joint account], and any additions thereto, shall become the property of each owner as joint tenants and, as such, that the depository may release the entire account to any owner during the lifetime of all owners.")

Mrs. Lowey is entitled to exercise control over and has legal title to all amounts, including cash, securities, and other property deposited in their joint accounts in New York banking institutions. The approximately [redacted] held by the Loweyes in joint accounts, therefore, qualified as personal funds under the definition stated in Section 110.10(a) of the FEC Regulations, which recognizes applicable state law to determine "legal right of access and control."

Even absent this provision of New York law, Mrs. Lowey had sufficient assets to make loans of \$350,000 to her campaign. Under the FEC regulations, a candidate's personal funds also include the full value of his or her share of those assets jointly owned with his or her spouse. Unless otherwise specified in a written instrument, fifty percent of all jointly owned assets qualify as personal funds of a candidate. 11 C.F.R. § 110.10(b)(3). In calculating the amount of jointly owned assets which qualify as personal funds, all such assets must be considered; not, as suggested in the Complaint, only the account from which funds are drawn. Fifty percent of this total qualifies as personal funds available for use by a candidate in his or her campaign.

Assets of [redacted] in Mrs. Lowey's own name, combined with the Lowey's joint liquid assets of approximately [redacted] on the date Mrs. Lowey filed to become a candidate, are far in excess of the amounts loaned to the campaign.

As stated in the Affidavit, Mr. Lowey made no deposit to the joint accounts nor did he transfer any assets to his wife

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for the purpose of financing her campaign for Congress. As indicated by their longstanding practice of joint management, throughout 1987 and 1988, the Loweyes continued to deposit and to maintain their liquid assets in a manner identical to that used during the prior 25 years, without regard to Mrs. Lowey's candidacy for federal office. In similar circumstances, the FEC held that if a family member establishes a "repetitious custom" of giving money to another member of the family, without regard to a possible candidacy for federal office, such sums are considered personal funds of the candidate. Advisory Opinion 1988-7, 1 Fed. Election Camp. Guide (CCH) ¶ 5916. (Cash gifts of \$20,000 each year given to a candidate for federal office by his parents were not considered contributions since the family had a custom (for three years prior to the campaign) of giving such gifts.) Thus, any sums deposited by Mr. Lowey into these joint accounts in the ordinary course of the family's financial management, even after Mrs. Lowey became a candidate, would qualify as personal funds of Mrs. Lowey.

Conclusion

As demonstrated above, the Complaint filed by the NRCC has no basis in fact or in law. Under both the applicable federal and state laws, Mrs. Lowey had sufficient personal funds to loan her campaign \$350,000. The Commission must dismiss this Complaint with further action.

If you have any questions or need additional information, please do not hesitate to contact the undersigned.

Very truly yours,



Robert F. Bauer
B. Holly Schadler
Counsel for Respondents

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BEFORE THE FEDERAL ELECTION COMMISSION

MUR 2754

Respondents: Nita Lowey for Congress and
Gloria Passidimo, as Treasurer

AFFIDAVIT OF STEPHEN LOWEY

County of New York)
) ss
State of New York)

I, STEPHEN LOWEY, being duly sworn and according to law,
hereby depose and state as follows:

1. I have personal knowledge of the facts set forth
herein and, if called upon to testify in this matter, I would
testify as set forth herein.

2. I am married to Nita Lowey, a Member of the House of
Representatives from New York's 20th Congressional District,
elected in November, 1988.

3. Since our marriage in 1961, Nita Lowey and I have
always deposited our respective salary checks into joint
checking accounts.

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4. Since our marriage, my wife and I have maintained a substantial portion of our savings in either jointly held bank accounts or money market funds. We have also had separate securities accounts.

5. Both Nita and I have always treated all of our assets as jointly owned and have drawn on these assets as the need arose.

6. This practice has been used by my wife and me for the 27 years of our marriage. It did not change before, during or after her candidacy for the United States House of Representatives.

7. When her mother died in May of 1981, my wife was left an inheritance of approximately [REDACTED]

8. This sum, together with other sums saved by us over the years out of our combined net earnings, has been invested, principally in securities and money market funds in the state of New York.

9. As of December 1987, we had a combined liquid net worth of approximately [REDACTED], in addition to our home, which we own jointly and which was worth approximately \$1.5 million. Approximately [REDACTED] was held in joint money market accounts.

10. The loans made by my wife to her campaign were made out of two money market accounts owned jointly by myself and my wife.

11. The loans made by my wife to her campaign constituted less than one-half of the amounts on deposit in these accounts.

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12. I made no deposit to our joint accounts nor any transfer of assets to my wife for the purpose of financing her campaign for Congress.



Stephen Lowey

SUBSCRIBED AND SWORN TO BEFORE ME
this 16th day of December, 1988.



Notary Public

My Commission Expires:

June 30, 1990

HELENE R. SOLOMON
Notary Public, State of New York
No. 6730429
Qualified in S. Rock County
Certificate Filed in New York County
Commission Expires June 30, 1990

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A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
1110 VERMONT AVENUE N.W. • WASHINGTON D.C. 20005 • (202) 887-9030

December 19, 1988

Lawrence M. Noble
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 2754 - Nita Lowey for Congress and
Gloria Passidimo, as Treasurer

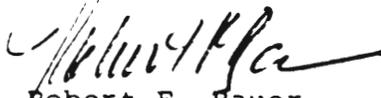
Attention: Jim Brown

Dear Mr. Noble:

Enclosed is the original executed affidavit of Stephen Lowey in the above-referenced MUR.

If you have any questions or need additional information, please do not hesitate to contact the undersigned.

Very truly yours,



Robert F. Bauer
B. Holly Schadler
Counsel for Respondents

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BEFORE THE FEDERAL ELECTION COMMISSION

MUR 2754

Respondents: Nita Lowey for Congress and
Gloria Passidimo, as Treasurer

AFFIDAVIT OF STEPHEN LOWEY

County of New York)
) ss
State of New York)

I, STEPHEN LOWEY, being duly sworn and according to law,
hereby depose and state as follows:

1. I have personal knowledge of the facts set forth
herein and, if called upon to testify in this matter, I would
testify as set forth herein.

2. I am married to Nita Lowey, a Member of the House of
Representatives from New York's 20th Congressional District,
elected in November, 1988.

3. Since our marriage in 1961, Nita Lowey and I have
always deposited our respective salary checks into joint
checking accounts.

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4. Since our marriage, my wife and I have maintained a substantial portion of our savings in either jointly held bank accounts or money market funds. We have also had separate securities accounts.

5. Both Nita and I have always treated all of our assets as jointly owned and have drawn on these assets as the need arose.

6. This practice has been used by my wife and me for the 27 years of our marriage. It did not change before, during or after her candidacy for the United States House of Representatives.

7. When her mother died in May of 1981, my wife was left an inheritance of approximately [REDACTED]

8. This sum, together with other sums saved by us over the years out of our combined net earnings, has been invested, principally in securities and money market funds in the state of New York.

9. As of December 1987, we had a combined liquid net worth of approximately [REDACTED] in addition to our home, which we own jointly and which was worth approximately \$1.5 million. Approximately [REDACTED] was held in joint money market accounts.

10. The loans made by my wife to her campaign were made out of two money market accounts owned jointly by myself and my wife.

11. The loans made by my wife to her campaign constituted less than one-half of the amounts on deposit in these accounts.

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12. I made no deposit to our joint accounts nor any transfer of assets to my wife for the purpose of financing her campaign for Congress.



Stephen Lowey

SUBSCRIBED AND SWORN TO BEFORE ME
this 16th day of December, 1988.



Notary Public

My Commission Expires:

June 30, 1990

HELENE R. SOLOMON
Notary Public, State of New York
No. 4730403
Qualified in Suffolk County
Certificate filed in New York County
Commission Expires June 30, 1990

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BEFORE THE FEDERAL ELECTION COMMISSION

EXHIBIT

In the Matter of)
)
Nita Lowey, Nita Lowey)
for Congress and)
and Gloria Passidimo, as treasurer)

MUR 2754

EXECUTIVE SESSION
FEB 28 1989

GENERAL COUNSEL'S REPORT

I. GENERATION OF MATTER

On October 20, 1988, Joseph R. Gaylord, as Executive Director of the National Republican Congressional Committee, filed a complaint against Nita Lowey, Nita Lowey for Congress and Gloria Passidimo, as treasurer ("Respondents"). The complaint alleges that Nita Lowey violated the Act by making loans to Nita Lowey for Congress, Lowey's principal campaign committee ("the Lowey Committee"), which were not from personal funds. The complaint also alleges that the Lowey Committee violated the Act by accepting the loans in violation of the Act. The Complainant seeks to have a portion of the loans attributed as contributions from Ms. Lowey's husband. As such, these alleged contributions by Ms. Lowey's husband would then violate 2 U.S.C. § 441a(a)(1)(A) because they would aggregate to more than \$1,000 in contributions from an individual for a single Federal election.

II. FACTUAL AND LEGAL ANALYSIS

A. The Law

The Federal Election Campaign Act of 1971, as amended ("the Act") limits the amount an individual can contribute to a

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candidate or an authorized political committee, with respect to any election for Federal office, to an aggregate amount of \$1,000. 2 U.S.C. § 441a(a)(1)(A).

Section 441a(f) of the Act also prohibits a candidate or political committee from knowingly accepting any contribution in violation of the provisions of Section 441a. In addition, no officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate in violation of the limitations imposed under Section 441a.

The Act defines "contribution" to include loans made to political committees. 2 U.S.C. § 431(8)(A). The Commission's regulations include a guarantee, endorsement, and any other form of security in the term "loan." Loans may not exceed the contribution limitations of Section 441a, and those that do are unlawful, even if they are repaid. A loan is a contribution when it is made and remains such to the extent that it remains unpaid. To the extent that it is repaid, a loan is no longer a contribution. 11 C.F.R. § 100.7(a)(1)(i)(A) and (B).

With the exception of certain property held jointly between a candidate and his or her spouse, discussed below, a loan is a contribution made by each endorser or guarantor, according to the portion of the total amount for which the endorser or guarantor is liable in a written agreement. Any repayment

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proportionately reduces the amount guaranteed or endorsed.

11 C.F.R. § 100.7(a)(1)(i)(C).

The Act and regulations do not limit the amount that candidates for federal office may contribute to their own committees from personal funds. The term "personal funds" includes:

1. any assets to which, under applicable state law, the candidate had a legal right of access to, or control over, at the time of becoming a candidate; and with which the candidate had either legal and rightful title or an equitable interest;¹
2. salary and other earned income from bona fide employment; dividends and proceeds from the sale of the candidate's stocks or other investments; bequests to the candidate; income from trusts established before candidacy; income from trusts established by bequest after candidacy, of which the candidate is the beneficiary; gifts of a personal nature which had been customarily received prior to candidacy; proceeds from lotteries and similar legal games of chance; and
3. the candidate's portion of assets jointly owned with his or her spouse. The candidate's personal funds shall be that portion which is the candidate's share of the assets under the instrument(s) of conveyance or ownership. If

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1. In a Memorandum to the Commission dated October 30, 1981, which discussed the proposed revisions to Section 110.10 as it pertained to the candidate's use of property in which the spouse has an interest, the Office of the General Counsel noted specifically that jointly held bank accounts should be viewed differently from other jointly held property. It was noted that in a joint bank account where joint tenancy is established, each party has "access to and control over" the entire bank account, as either can withdraw any part, or the entire amount, of the funds from such account. A different view should be taken, however, when a joint tenancy exist with real property, where one party has access to and control over only his or her half interest in such property.

no specific share is so indicated, the value of one-half of the property used shall be considered as personal funds of the candidate. 11 C.F.R. § 110.10.

The name of each person who makes a loan to the reporting committee during the reporting period, together with the name of any endorser or guarantor of such loan, and the date and amount or value of such loan, must be disclosed on financial reports filed with the Commission. 2 U.S.C. § 434(b)(3)(E). Each report filed by an authorized committee must include loans made by or guaranteed by the candidate.

2 U.S.C. § 434(b)(2)(G).

The candidate in this matter is a resident of the State of New York, and the financial transactions involving the loans at issue occurred in her home state. In accordance with 11 C.F.R. § 110.10(b)(1), a brief review of the applicable New York banking law follows, as it is relevant to determining the candidate's ownership of assets in certain joint banking and securities accounts held with her husband.

The New York State Banking Law states that "(a) [w]hen a deposit of cash, securities or other property has been made or shall hereafter be made in or with any banking organization or foreign banking corporation transacting business in this state, or shares shall have been already issued or shall be hereafter issued, in any savings and loan association . . . transacting business in this state, in the name of such depositor or

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shareholder and another person and in form to be paid or delivered to either, or the survivor of them, such deposit or shares and any additions thereto made, by either of such persons, after the making thereof, shall become the property of such persons as joint tenants and the same, together with all additions and accruals thereon, shall be held for the exclusive use of the persons so named, and may be paid or delivered to either during the lifetime of both . . . ;" and further that, "(b) [t]he making of such deposit or the issuance of such share in such form shall, in the absence of fraud or undue influence, be prima facie evidence . . . of the intention of both depositors or shareholders to create a joint tenancy and to vest title to such deposit or shares, and additions and accruals thereon, in such survivor. The burden of proof in refuting such prima facie evidence is upon the party or parties challenging the title of the survivors." 4 McKinney's Banking Law § 675. The New York banking regulations further state "(a) that such deposit [in a joint account], and any additions thereto, shall become the property of each owner as joint tenants and, as such, that the depository may release the entire account to any owner during the lifetime of all owners;" and "(b) that the depository may honor checks or orders drawn by, or withdrawal requests from, any owner during the lifetime of all owners." General Regulations of Banking Board, Chapter

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1, Part 15, § 15.3(a) and (b).²

These principles have previously been applied in determining a candidate's "personal funds" in MUR 2292, involving Andrew Stein. The factual and legal analysis presented here is consistent with that in MUR 2292.

B. The Analysis

On December 3, 1987, Nita Lowey filed a letter with the Commission, which was dated November 25, 1987, in which she declared her candidacy for the U.S. House of Representatives in New York's 20th Congressional District. On December 15, 1987, an official Statement of Candidacy was filed with the Commission. Prior to becoming a candidate, Ms. Lowey had served as an Assistant Secretary of State for the State of New York. According to press accounts, Ms. Lowey resigned her

2. The New York case law has further provided that the establishment of a joint tenancy under Section 675 of the banking law is a rebuttable presumption, and that the presumption may be overcome by a showing that the joint account is for convenience only. Phelps v. Kramer (1984), 477 N.Y.S.2d 743; Phillips v. Phillips (1979), 419 N.Y.S.2d 573; Roth v. Panessa (1970), 310 N.Y.S.2d 694. Generally, a joint tenant has an alienable interest in one-half of a joint bank account during the lifetime of both tenants and an inalienable and inchoate interest contingent upon survivorship in the whole account. However, either joint tenant of the bank account may withdraw his or her half or the whole by obtaining possession of the bank book. Also, one party to a joint tenancy in a bank account may recover the excess withdrawn over moiety by the other joint tenant without consent or ratification from such tenant. In re Filfiley's Will (1970), 313 N.Y.S.2d 793. Therefore, the state law and regulations relieve the banking institutions from any liability for releasing any amount of the funds in a joint account to one tenant, with either tenant having a legal right of access to the whole account; it appears, however, that the other tenant may recover his or her portion as a matter of equity, if pursued. Thus, in the present case the jointly held money market accounts should be analyzed analogously with joint tenant bank accounts.

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position with the State of New York in December of 1987 to campaign for the U.S. House. On November 8, 1988, Ms. Lowey was elected to the U.S. House of Representatives.

The \$350,000 in loans involved in this complaint were made by Ms. Lowey to the Lowey Committee in the following amounts and on the following dates:

- \$50,000 on June 28, 1988
- \$100,000 on August 14, 1988
- \$100,000 on August 25, 1988
- \$50,000 on September 8, 1988
- \$50,000 on September 19, 1988.

These loans were reported to the Commission. The complaint submitted a Gannett Westchester Newspaper article citing Ms. Lowey's campaign manager, and dated November 4, 1988, stating Ms. Lowey had three (3) joint bank accounts as of November 24, 1987. This same article cites the campaign manager as stating assets in the three joint accounts totaled \$789,403, and the account from which the campaign loans were drawn had \$449,379 in it on November 24, 1987. According to the complaint and the Westchester article, Ms. Lowey has previously disclosed to the press that the loans came from an account, jointly held with her husband, which had a balance of \$841,706 by March 10, 1988. In contrast, Mr. Lowey's sworn affidavit states that the loans came from two money market accounts owned jointly by himself and his wife. Mr. Lowey's

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affidavit further states that the loans made by his wife constituted less than one-half of the amounts on deposit in these accounts.

Complainant maintains that the balance of the account, from which the loans were made, as of November 25, 1987, is determinative because Complainant asserts only one-half of those assets jointly held at the beginning of the candidacy are personal funds available for contribution to or expenditure by the campaign according to 11 C.F.R. § 110.10(3). Complainant's position is that Ms. Lowey's Financial Disclosure Statement (filed pursuant to the Ethics in Government Act) reveals that it would be unlikely for her to have sufficient resources to make large loans, such as those in this case, to her candidacy. The financial disclosure reports reveal Ms. Lowey had an annual salary of \$41,743 as an Assistant Secretary of State for the State of New York.

Complainant asserts that in order for the \$350,000 to represent "personal funds," the balance in the account from which the funds were allegedly drawn must have been at least \$700,000 as of November 25, 1987. According to Complainant's interpretation, if Ms. Lowey's campaign manager's statement to the press is accurate, that the account from which the loans came had a balance of only \$449,379 on November 24, 1987, then only one-half, or \$224,689.50, could be accessed by Ms. Lowey for her campaign. Under this interpretation the remainder of the loan would be considered a contribution from Mr. Lowey. Complainant alleges that the difference between November 1987

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and March 1988 must be attributed to subsequent deposits by Ms. Lowey's husband out of his income as a partner in a New York City law firm, because Ms. Lowey had no salary to deposit after December, 1987.

In response to the complaint, counsel for Ms. Lowey asserts that as of the date of her candidacy announcement she held approximately [REDACTED] in securities in her name alone. In part, this amount is said to reflect money, approximately [REDACTED], that Ms. Lowey inherited upon her mother's death in 1981. In addition, the Loweyes assert they held approximately [REDACTED] in jointly owned money market accounts as of December 1987. Since their marriage in 1961, the Loweyes maintain they have always deposited their respective salary checks into jointly held checking accounts. The Loweyes have also maintained a substantial portion of their savings in jointly held bank accounts or money market funds.

The response correctly asserts that because of New York law Ms. Lowey is entitled to exercise control over and has legal title to all amounts, including cash, securities, and other property deposited in joint accounts held in association with her husband in New York banking institutions. Therefore, Respondent's position is that the approximately [REDACTED] held by the Loweyes in joint accounts, qualifies as personal funds under the definition stated in Section 110.10(a) of the Commission Regulations, which recognizes applicable state law to determine "legal right of access and control."

Respondent's position is that in calculating the amount of

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jointly owned assets which qualify as personal funds, all such assets must be considered; not, as suggested in the complaint, only the account from which funds are drawn. Thus, counsel argues that fifty percent of all these total funds would qualify as personal funds available for use by a candidate in his or her campaign.

The real issue in this matter, however, is whether the candidate here actually made a contribution from personal funds, and not whether she had enough funds on the date of her candidacy announcement from which she could have made such a contribution.

In addressing this issue, Ms. Lowey's husband, Stephen Lowey, by sworn affidavit states that as of December 1987, he and Ms. Lowey had a combined liquid net worth of approximately [REDACTED], of which [REDACTED] was held in joint money market accounts. Mr. Lowey's affidavit further states that the loans his wife made to her campaign were made out of two money market accounts owned jointly by the couple. Finally, Mr. Lowey states in his affidavit that the loans his wife made to her campaign constituted less than one-half of the amounts on deposit in their joint money market accounts and that he made no deposit or transfer to those accounts for the purpose of financing his wife's campaign for the U.S. House of Representatives. Although as noted earlier this affidavit differs somewhat from the statements quoted in the news accounts, this office believes the sworn affidavit of Mr. Lowey deserves greater weight. We note that even if the figures

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quoted in the news articles are correct, the analysis used here would reach the same result.

On the basis of this affidavit, it appears that Ms. Lowey had sufficient interest in the assets utilized to make loans to her campaign effort, without her husband supplementing the joint accounts. Mr. Lowey states in his affidavit that the couple held approximately [REDACTED] in joint money market accounts. New York law makes the entire balance of such joint money market accounts the "personal funds" of Nita Lowey under the regulatory definition. As already pointed out, Section 110.10(b)(1) of the Commission's regulations requires that state law be applied when considering the ownership of assets for the purposes of this section. The New York banking law and regulations clearly establish a joint tenancy in the case of joint deposits in banking and securities accounts, and provide that the entire account may be released to either owner during their lifetime. Either party, therefore, has the right of access to or control over the whole, and they each have a legal and rightful title to the joint account. As such, the requirements of 11 C.F.R. § 110.10(b)(1) are met in those instances where the loans are derived from Ms. Lowey's personal funds, including the jointly owned money market accounts.

Based on the foregoing, this Office recommends that the Commission find no reason to believe Nita Lowey, Nita Lowey for Congress or Gloria Passidimo, as treasurer violated any provisions of the Federal Election Campaign Act of 1971, as amended, on the basis of the complaint filed in MUR 2754.

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III. RECOMMENDATIONS

1. Find no reason to believe that Nita Lowey, Nita Lowey for Congress and Gloria Passidimo, as treasurer, violated any provisions of the Federal Election Campaign Act of 1971, as amended, on the basis of the complaint filed in MUR 2754.
2. Approve the attached letters.
3. Close the file.

Lawrence M. Noble
General Counsel

2/8/89
Date

Lois G. Lerner
BY: Lois G. Lerner
Associate General Counsel

Attachments

1. Response of Nita Lowey for Congress and Gloria Passidimo, as treasurer.
2. Executed affidavit of Stephen Lowey.
3. Letters

Staff person: J. Albert Brown

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/JOSHUA MCFADDEN
COMMISSION SECRETARY *JM*

DATE: FEBRUARY 13, 1989

SUBJECT: OBJECTIONS TO MUR 2754 - General Counsel's Report
Signed February 8, 1989

The above-captioned document was circulated to the Commission on Thursday, February 9, 1989 at 4:00 p.m.

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

| | |
|-----------------------|---------|
| Commissioner Aikens | _____ |
| Commissioner Elliott | _____ |
| Commissioner Josefiak | _____ |
| Commissioner McDonald | _____ |
| Commissioner McGarry | _____ X |
| Commissioner Thomas | _____ X |

This matter will be placed on the meeting agenda for February 28, 1989.

Please notify us who will represent your Division before the Commission on this matter.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM - FEBRUARY 14, 1989

TO: MARJORIE EMMONS,
Commission Secretary

FROM: COMMISSIONER THOMAS J. JOSEFIAK

RE: MUR 2754

A handwritten signature in black ink, appearing to be "T. Josefiak", written over the name of the sender in the "FROM:" field.

On February 13, 1989 I voted to object to the Recommendations of the General Counsel in MUR 2754, signed February 8, 1989.

I wish to withdraw my objection and be recorded as approving the Recommendations of the General Counsel.

89040742800



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/CANDACE M. JONES *cmj*
COMMISSION SECRETARY

DATE: FEBRUARY 14, 1989

SUBJECT: OBJECTIONS TO MUR 2754 - GENERAL COUNSEL'S REPORT
SIGNED FEBRUARY 8, 1989

The above-captioned document was circulated to the Commission on Thursday, February 9, 1989 at 4:00 P.M.

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

| | |
|-----------------------|----------|
| Commissioner Aikens | _____ |
| Commissioner Elliott | _____ |
| Commissioner Josefiak | _____ |
| Commissioner McDonald | _____ |
| Commissioner McGarry | _____ XX |
| Commissioner Thomas | _____ XX |

This matter will be placed on the meeting agenda for Tuesday, February 28, 1989.

Please notify us who will represent your Division before the Commission on this matter.

8904074:801



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/CANDACE M. JONES *cmj*
COMMISSION SECRETARY

DATE: FEBRUARY 14, 1989

SUBJECT: OBJECTIONS TO MUR 2754 - GENERAL COUNSEL'S REPORT
SIGNED FEBRUARY 8, 1989

The above-captioned document was circulated to the Commission on Thursday, February 9, 1989 at 4:00 P.M.

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

| | |
|-----------------------|----------------|
| Commissioner Aikens | _____ |
| Commissioner Elliott | _____ |
| Commissioner Josefiak | _____ XX _____ |
| Commissioner McDonald | _____ |
| Commissioner McGarry | _____ XX _____ |
| Commissioner Thomas | _____ XX _____ |

This matter will be placed on the meeting agenda for Tuesday, February 28, 1989.

Please notify us who will represent your Division before the Commission on this matter.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: MARJORIE EMMONS
COMMISSION SECRETARY

FROM: JOHN WARREN MCGARRY *JWM*
COMMISSIONER

SUBJECT: OBJECTION TO MUR 2754

DATE: FEBRUARY 16, 1989

I withdraw my objection to MUR 2754 and cast my vote in favor of the General Counsel's recommendations in that matter.

89040742800

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
 Nita Lowey)
 Nita Lowey for Congress and) MUR 2754
 Gloria Passidimo, as)
 treasurer)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of February 28, 1989, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions in MUR 2754:

1. Find no reason to believe that Nita Lowey, Nita Lowey for Congress and Gloria Passidimo, as treasurer, violated any provisions of the Federal Election Campaign Act of 1971, as amended, on the basis of the complaint filed in MUR 2754.
2. Approve the letters attached to the General Counsel's report dated February 8, 1989.
3. Close the file.

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

Attest:

3-2-89

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

39040742804



FEDERAL ELECTION COMMISSION

WASHINGTON D.C. 20461

March 8, 1989

Robert F. Bauer
B. Holly Schadler
Perkins Coie
Suite 1200
1110 Vermont Avenue, N.W.
Washington, D.C. 20005

RE: MUR 2754
Nita Lowey, Nita Lowey for
Congress and Gloria
Passidimo, as
treasurer

Dear Mr. Bauer and Ms. Schadler:

On October 31, 1988, the Federal Election Commission notified your clients, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On February 28, 1989, the Commission found, on the basis of the information in the complaint, and information provided by your clients, that there is no reason to believe Nita Lowey, Nita Lowey for Congress or Gloria Passidimo violated any provisions of the Federal Election Campaign Act of 1971, as amended, on the basis of the complaint filed in MUR 2754. Accordingly, the Commission closed its file in this matter.

This matter will become a part of the public record within 30 days. If you wish to submit any materials to appear on the public record, please do so within ten days. Please send such materials to the Office of the General Counsel.

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. 20461

March 8, 1989

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Joseph R. Gaylord
Executive Director
National Republican
Congressional Committee
320 First Street, S.E.
Washington, D.C. 20003

RE: MUR 2754

Dear Mr. Gaylord:

On February 28, 1989, the Federal Election Commission reviewed the allegations of your complaint dated October 26, 1988, and found that on the basis of the information provided in your complaint, and information provided by the Respondents, there is no reason to believe Nita Lowey, Nita Lowey for Congress or Gloria Passidimo, as treasurer violated any provisions of the Federal Election Campaign Act of 1971, as amended, on the basis of the complaint filed in MUR 2754. Accordingly, on February 28, 1989, the Commission closed the file in this matter. The Federal Election Campaign Act of 1971, as amended ("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

THIS IS THE END OF MUR # 2754

DATE FILMED 4/6/89 CAMERA NO. 4

CAMERAMAN AS

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