



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4730

DATE FILMED 12/2/98 CAMERA NO. 3

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MUR 4730

To whom it may concern:

This is to be considered a formal complaint against Tammy Baldwin, Rick Phelps, Joe Wineke, and The Capital Times, a Madison, WI publication of Madison Newspapers Incorporated

The Capital Times has been for the past four months engaged in an active campaign to promote the three above named candidates, and to create the impression that they are the only Democratic candidates for Congress in the Second District. Under the "Reasonable Person Test", they are engaged in a campaign of "Express Advocacy" and as such must declare all such communications as in-kind donations to the above named campaigns

In addition to investigating this allegation, I ask that you also investigate if this was done with the full cooperation, encouragement and/or knowledge of the above named candidates, or their surrogates, which would be a violation of campaign finance reporting requirements

I ask that the above campaigns immediately report the full "in-kind" value of the above actions, and immediately remit to The Capital Times the full amount in excess of the permitted donation level. I would also ask that The Capital Times be instructed to cease and desist in this clearly illegal activity, and be fined and/or punished accordingly

Patrick J. O'Brien
Democratic Candidate,
Second Congressional District

Sworn before me this 18th day of March

Notary Public

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 31, 1998

Mr. Patrick J. O'Brien
525 State Street, #2
Madison, WI 53703

RE: MUR 4730

Dear Mr. O'Brien:

This letter acknowledges receipt on March 24, 1998, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended. The respondent(s) will be notified of this complaint within five business days.

Your letter seeks injunctive relief to prevent the respondents from continuing to engage in the allegedly improper activity. 2 U.S.C. § 437g(a)(6) provides that the Commission may seek such relief at the end of the administrative enforcement process. Accordingly, the Commission will not grant your request for injunctive relief at this time.

You 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 notarized and sworn to in the same manner as the original complaint. We have numbered this matter MUR 4730. 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,

F. Andrew Turley (428)

F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket

Enclosure
Procedures

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 31, 1998

Jeneene M. Olson, Treasurer
Phelps for Congress
PO Box 1651
Madison, WI 53701

RE: MUR 4730

Dear Ms. Olson:

The Federal Election Commission received a complaint which indicates that Phelps for Congress ("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 4730. 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.

The complainant seeks injunctive relief to prevent the Committee and you, as treasurer, from continuing to engage in the allegedly improper activity. 2 U.S.C. § 437g(a)(6) provides that the Commission may seek such relief at the end of the administrative enforcement process. Accordingly, the Commission will not grant the complainant's request for injunctive relief at this time. The Commission will proceed with the processing of the remainder of the complaint pursuant to 2 U.S.C. § 437g(a).

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.

98043901294

If you have any questions, please contact Alva E. Smith at (202) 694-1650. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

F. Andrew Turley (yes)

F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket

Enclosures

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

cc: Richard J. Phelps

90043201295



FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 31, 1998

George L. Ketterer, Treasurer
Wineke for Congress
412 Edward Street
Verona, WI 53593

RE: MUR 4730

Dear Mr. Ketterer:

The Federal Election Commission received a complaint which indicates that Wineke for Congress ("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 4730. 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.

The complainant seeks injunctive relief to prevent the Committee and you, as treasurer, from continuing to engage in the allegedly improper activity. 2 U.S.C. § 437g(a)(6) provides that the Commission may seek such relief at the end of the administrative enforcement process. Accordingly, the Commission will not grant the complainant's request for injunctive relief at this time. The Commission will proceed with the processing of the remainder of the complaint pursuant to 2 U.S.C. § 437g(a).

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If you have any questions, please contact Alva E. Smith at (202) 694-1650. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

F. Andrew Turley (FAS)

F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket

Enclosures

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

cc: Joseph S. Wineke

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 31, 1998

Kevin C. Myren, Treasurer
Tammy Baldwin for Congress
PO Box 696
Madison, WI 53701

RE: MUR 4730

Dear Mr. Myren:

The Federal Election Commission received a complaint which indicates that Tammy Baldwin for Congress ("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 4730. 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.

The complainant seeks injunctive relief to prevent the Committee and you, as treasurer, from continuing to engage in the allegedly improper activity. 2 U.S.C. § 437g(a)(6) provides that the Commission may seek such relief at the end of the administrative enforcement process. Accordingly, the Commission will not grant the complainant's request for injunctive relief at this time. The Commission will proceed with the processing of the remainder of the complaint pursuant to 2 U.S.C. § 437g(a).

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.

98043901298

If you have any questions, please contact Alva E. Smith at (202) 694-1650. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

F. Andrew Turley (AES)

F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket

Enclosures

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

cc: Tammy Baldwin

98043901299



FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 31, 1998

J.H. Lussier, Registered Agent
The Capital Times
1901 Fish Hatchery Road
Madison, WI 53713

RE: MUR 4730

Dear Mr. Lussier:

The Federal Election Commission received a complaint which indicates that The Capital Times 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 4730. 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 Capital Times 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.

The complainant seeks injunctive relief to prevent The Capital Times from continuing to engage in the allegedly improper activity. 2 U.S.C. § 437g(a)(6) provides that the Commission may seek such relief at the end of the administrative enforcement process. Accordingly, the Commission will not grant the complainant's request for injunctive relief at this time. The Commission will proceed with the processing of the remainder of the complaint pursuant to 2 U.S.C. § 437g(a).

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) 694-1650. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

F. Andrew Turley #28

F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket

Enclosures

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

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Rick Phelps for Congress

APR 13 3 29 PM '98

April 6, 1998

F. Andrew Turley, Supervisory Attorney
General Counsel's Office
Federal Election Commission
Washington, D.C. 20643

Re: MUR 4730

Dear Mr. Turley:

We are in receipt of the complaint of Mr. Patrick O'Brien in this matter related to *The Capital Times* newspapers articles about the 2nd Congressional District race in Wisconsin. Mr. O'Brien contends that the newspaper has "engaged in an active campaign to promote [candidates Phelps, Baldwin and Wineke], and to create the impression that they are the only Democratic candidates for Congress in the Second District." It is our position that no action should be taken against Phelps for Congress or our former Treasurer Jeneene Olson in this matter in that no basis for any complaint exists.

While the newspaper has covered some limited aspects of this race, it certainly has not actively "promoted" Mr. Phelps as a candidate. Beyond that, neither Mr. Phelps nor Phelps for Congress has any ability to speculate on the objectives of the newspaper's coverage. Mr. Phelps, based on the nature of the articles and editorials of *The Capital Times*, has not been the subject of any advocacy, much less "Express Advocacy", by the paper. None of the local, standard coverage by this local daily newspaper of this race qualifies as "in-kind donations."

Neither Mr. Phelps nor anyone on his campaign staff or "committee" have encouraged, cooperated with or had any knowledge of any alleged promotion by the newspaper of any particular candidate, in violation of campaign finance reporting requirements.

Should you have further questions about this matter, please feel free to contact us at any time at (608) 286-9800.

Sincerely,



A.J. Goodman
Phelps for Congress



The Capital Times

1901 FISH HATCHERY ROAD / P.O. BOX 8060
MADISON, WI 53708 / (608) 252-6410

DAVE ZWEIFEL, Editor

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Apr 13 3 31 PM '98

4730

April 8, 1998

F. Andrew Turley
Federal Elections Commission
999 E. Street NW
Washington, DC 20463

Dear Mr. Turley:

First, it pains me to have to spend time having to prepare this letter in response to the one you sent to J. H. Lussier, registered agent for The Capital Times of Madison, Wisconsin, dated March 31, 1998.

Your letter asks the newspaper for a response to a complaint filed with the FEC by one Patrick J. O'Brien, a supposed candidate for Congress from Wisconsin's Second District.

As it happens, we have covered Mr. O'Brien's candidacy. In fact, we are the only paper in the community to have also included his photograph in a story about a forum at which he appeared. Aside from that, he has sent us no information, held no press conferences, nor even telephoned anyone to talk about his campaign. Last time we heard from this same Mr. O'Brien, I believe, he was running for Congress in 1996. If memory serves, he lost the Democratic primary about 7 to 1.

Nevertheless, even if he had not covered Mr. O'Brien's candidacy, a certain document known as the First Amendment to the Constitution of the United States of America makes it clear that we cannot be forced to cover his campaign nor any campaign, for that matter. There's a case in point you might want to check: Miami Herald Publishing Co. v. Tornillo, 418US241 (1974). It said, in part:

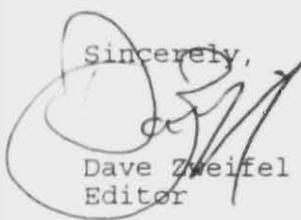
"The choice of material to go into a newspaper is more than a passive receptacle or conduit for news, comment and advertising. The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public officials -- whether fair or unfair -- constitute the exercise of editorial control and judgment. It has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with the First Amendment guarantees of a free press ..."

I am frankly surprised that you would bother yourself with a complaint of this nature which, on its face, is unconstitutional when there are so many important questions facing the FEC these days.

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If you have any further questions regarding this matter, please contact me personally.

Sincerely,



Dave Zweifel
Editor

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TAMMY BALDWIN FOR CONGRESS

P.O. Box 696 • Madison, WI 53701 • 608/258-9800 • 258-9808 fax 11 '98

APR 15 11 23 AM '98
April 10, 1998

General Counsel's Office
Federal Election Commission
Washington, DC 20463

RE: MUR 4730

Dear General Counsel:

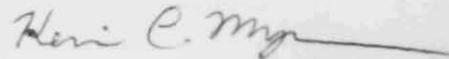
This is to request that no action be taken against Tammy Baldwin for Congress (the "committee") nor myself, Kevin Myren, as treasurer of the committee in reference to a complaint filed by Patrick O'Brien.

First, the complained-of activity falls squarely within the ambit of First Amendment protection, which the Supreme Court, Congress and the FEC have been careful to protect in drafting and applying campaign finance regulations. These are editorial decisions by the press about which campaigns and candidates to cover, how to cover them, and what to write about them. Such decisions are sacrosanct under First Amendment Law. They are exempted from coverage of the campaign finance laws.

Second, decisions of Madison Newspapers, Inc., The Capital Times, and indeed, all news media, are made independently of this committee.

Please do not hesitate to contact our committee for any further information in regards to this matter. We look forward to hearing from you with your decision.

Sincerely,



Kevin Myren
Treasurer

608 258 9800 43701 696

BEFORE THE FEDERAL ELECTION COMMISSION

Oct 21 3 46 AM '98

In the Matter of

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CASE CLOSURES UNDER
ENFORCEMENT PRIORITY

SENSITIVE

GENERAL COUNSEL'S REPORT

I. INTRODUCTION.

The cases listed below have been identified as either stale or of low priority based upon evaluation under the Enforcement Priority System (EPS). This report is submitted to recommend that the Commission no longer pursue these cases.

II. CASES RECOMMENDED FOR CLOSURE.

A. **Cases Not Warranting Further Action Relative to Other Cases Pending Before the Commission**

EPS was created to identify pending cases that, due to the length of their pendency in inactive status or the lower priority of the issues raised in the matters relative to others presently pending before the Commission, do not warrant further expenditure of resources. Central Enforcement Docket (CED) evaluates each incoming matter using Commission-approved criteria which results in a numerical rating for each case.

Closing

cases permits the Commission to focus its limited resources on more important cases presently pending before it. Based upon this review, we have identified 17 cases that do

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not warrant further action relative to other pending matters.¹ The attachments to this report contain a factual summary of each case, the EPS rating, and the factors leading to assignment of a low priority and recommendation not to further pursue the matter.

B. Stale Cases

Effective enforcement relies upon the timely pursuit of complaints and referrals to ensure compliance with the law. Investigations concerning activity more remote in time usually require a greater commitment of resources, primarily due to the fact that the evidence of such activity becomes more difficult to develop as it ages. Focusing investigative efforts on more recent and more significant activity also has a more positive effect on the electoral process and the regulated community. In recognition of this fact, EPS also provides us with the means to identify those cases which

remain unassigned for a significant period due to a lack of staff resources for effective investigation. The utility of commencing an investigation declines as these cases age, until they reach a point when activation of a case would not be an efficient use of the Commission's resources.

¹ These cases are: Pre-MUR 365 (*Friends of Marjorie Margolies-Mezvinsky, et al*); MUR 4729 (*Friends of Melinda Katz*); MUR 4730 (*The Capital Times*); MUR 4731 (*Randall Terry Live*); MUR 4732 (*Juneau Democratic District Committee*); MUR 4733 (*Families and Taxpayers for Bob Kilbanks*); MUR 4734 (*Dennis Newinski for Congress*); MUR 4738 (*Friends of Corrine Brown*); MUR 4739 (*Direct Voice/DMAPAC*); MUR 4744 (*Mayor James Hoffnan*); MUR 4745 (*Congressional Accountability Project*); MUR 4746 (*Phillip Cyre*); MUR 4747 (*NAWGA-PAC & FOODVIP PAC*); MUR 4765 (*Gary Miller*); MUR 4767 (*Committee to Elect Glenn Reese To Congress*); MUR 4778 (*Rick Hill for Congress*); and MUR 4784 (*Verticchio for Congress*).

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We have identified cases that have remained on the Central Enforcement Docket for a sufficient period of time to render them stale. We recommend that these cases be closed.⁴

We recommend that the Commission exercise its prosecutorial discretion and direct closure of the cases listed below, effective October 29, 1998. Closing these cases as of this date will allow CED and the Legal Review Team the necessary time to prepare closing letters and case files for the public record.

⁴ The cases recommended for closure are: Pre-MUR 345 (*Simon Fireman*); MUR 4630 (*Kentucky State Democratic Central Committee*); MUR 4662 (*Democratic Congressional Campaign Cmte*); RAD 97L-08 (*Thomas for Congress*); RAD 97L-11 (*Eggleston for Congress*); RAD 97L-12 (*Massachusetts Democratic Party*); RAD 97L-13 (*McMains for Senate*); RAD 97L-20 (*Republican Party of Arkansas*); and RAD 97NF-24 (*NC Committee Against Extremism*).

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III. RECOMMENDATIONS.

A. Decline to open a MUR, close the file effective October 29, 1998, and approve the appropriate letters in the following matters:

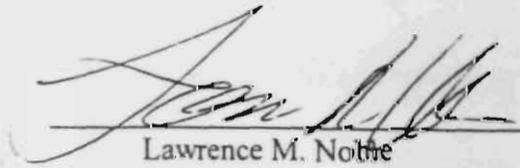
RAD 97L-08	RAD 97L-13	Pre-MUR 345
RAD 97L-11	RAD 97L-20	Pre-MUR 365
RAD 97L-12	RAD 97NF-24	

B. Take no action, close the file effective October 29, 1998, and approve the appropriate letters in the following matters:

MUR 4630	MUR 4732	MUR 4745
	MUR 4733	MUR 4746
MUR 4662	MUR 4734	MUR 4747
MUR 4729	MUR 4738	MUR 4765
MUR 4730	MUR 4739	MUR 4767
MUR 4731	MUR 4744	MUR 4778
		MUR 4784

10/20/98

Date



Lawrence M. Notre
General Counsel

98043901309

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Case Closures Under)
Enforcement Priority.)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on October 27, 1998, the Commission took the following actions with respect to the General Counsel's October 20, 1998 report on Case Closures under Enforcement Priority:

I. Decided by a vote of 4-0 to:

- A. Decline to open a MUR, close the file effective October 29, 1998, and approve the appropriate letters in the following matters, as recommended in the General Counsel's Report dated October 20, 1998:

1. RAD 97L-08	5. RAD 97L-20
2. RAD 97L-11	6. RAD 97NF-24
3. RAD 97L-12	7. Pre-MUR 345
4. RAD 97L-13	8. Pre-MUR 365

- B. Take no action, close the file effective October 29, 1998, and approve the appropriate letters in the following matters, as recommended in the General Counsel's Report dated October 20, 1998:

1. MUR 4630	7. MUR 4733
2. MUR 4662	8. MUR 4734
3. MUR 4729	9. MUR 4738
4. MUR 4730	10. MUR 4739
5. MUR 4731	11. MUR 4744
6. MUR 4732	12. MUR 4745

(continued)

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Federal Election Commission
Certification for Case Closure Under
Enforcement Priority
October 27, 1998

- | | |
|--------------|--------------|
| 13. MUR 4746 | 16. MUR 4767 |
| 14. MUR 4747 | 17. MUR 4778 |
| 15. MUR 4765 | 18. MUR 4784 |

Commissioners Elliott, Mason, McDonald,
and Thomas voted affirmatively for the
decision; Commissioners Sandstrom and Wold
did not cast a vote.

Attest:

10/27/98
Date

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

Received in the Secretariat: Wed., Oct. 21, 1998 9:46 a.m.
Circulated to the Commission: Wed., Oct. 21, 1998 11:00 a.m.
Deadline for vote: Mon., Oct. 26, 1998 4:00 p.m.

lrd

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 2, 1998

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Patrick J. O'Brien
525 State Street, #2
Madison, WI 53703

RE: MUR 4730

Dear Mr. O'Brien:

On March 24, 1998, the Federal Election Commission received your complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended ("the Act").

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against the respondents. See attached narrative. Accordingly, the Commission closed its file in this matter on October 29, 1998. This matter will become part of the public record within 30 days.

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,

A handwritten signature in black ink, appearing to read "F. Andrew Turley".

F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket

Attachment
Narrative

98043901312

MUR 4730
THE CAPITAL TIMES

Patrick J. O'Brien, a candidate in the Second Congressional District in Wisconsin, alleges that *The Capital Times* newspaper made in-kind contributions to his three other primary rivals by expressly advocating and promoting their candidacies through coverage of their campaigns without mentioning his own. This allegation mirrors that of a prior complaint filed by Mr. O'Brien against *Madison Magazine* in March 1998 (MUR 4727), which was closed in June 1998.

The Capital Times responds that it had in fact covered Mr. O'Brien's candidacy and was the only newspaper to have included his photograph in a news story. The respondent further asserted that the degree of coverage afforded to the candidates for this congressional race was squarely within its constitutional right to exercise editorial control and judgment over matters included in its newspaper.

In response to the complaint, Tammy Baldwin for Congress states that the decision of *The Capital Times* to cover the campaign is constitutionally-protected activity and that all coverage decisions were made independently of the Committee. Rick Phelps for Congress, in its response, denied that *The Capital Times* had actively promoted the Phelps candidacy in any way, and also denied any involvement in the decisions by the newspaper regarding its coverage of this race. Wineke for Congress did not file a response.

This matter is less significant relative to other matters pending before the Commission.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 2, 1998

Mr. Scott Herrick, Treasurer
Phelps for Congress
P.O. Box 1651
Madison, WI 53701

RE: MUR 4730

Dear Mr. Herrick:

On March 31, 1998, the Federal Election Commission notified Jeneene Olson, former treasurer, of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against Phelps for Congress and you, as treasurer. See attached narrative. Accordingly, the Commission closed its file in this matter on October 29, 1998.

The confidentiality provisions of 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 prior to receipt of your additional materials, any permissible submissions will be added to the public record when received.

If you have any questions, please contact Alva E. Smith on our toll-free telephone number, (800) 424-9530. Our local telephone number is (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "F. Andrew Turley".

F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket

Attachment
Narrative

98043901314

MUR 4730
THE CAPITAL TIMES

Patrick J. O'Brien, a candidate in the Second Congressional District in Wisconsin, alleges that *The Capital Times* newspaper made in-kind contributions to his three other primary rivals by expressly advocating and promoting their candidacies through coverage of their campaigns without mentioning his own. This allegation mirrors that of a prior complaint filed by Mr. O'Brien against *Madison Magazine* in March 1998 (MUR 4727), which was closed in June 1998.

The Capital Times responds that it had in fact covered Mr. O'Brien's candidacy and was the only newspaper to have included his photograph in a news story. The respondent further asserted that the degree of coverage afforded to the candidates for this congressional race was squarely within its constitutional right to exercise editorial control and judgment over matters included in its newspaper.

In response to the complaint, Tammy Baldwin for Congress states that the decision of *The Capital Times* to cover the campaign is constitutionally-protected activity and that all coverage decisions were made independently of the Committee. Rick Phelps for Congress, in its response, denied that *The Capital Times* had actively promoted the Phelps candidacy in any way, and also denied any involvement in the decisions by the newspaper regarding its coverage of this race. Wineke for Congress did not file a response.

This matter is less significant relative to other matters pending before the Commission.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 2, 1998

Mr. George L. Ketterer, Treasurer
Wineke for Congress
412 Edward Street
Verona, WI 53593

RE: MUR 4730

Dear Mr. Ketterer:

On March 31, 1998, the Federal Election Commission notified you of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against Wineke for Congress and you, as treasurer. See attached narrative. Accordingly, the Commission closed its file in this matter on October 29, 1998.

The confidentiality provisions of 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 prior to receipt of your additional materials, any permissible submissions will be added to the public record when received.

If you have any questions, please contact Alva E. Smith on our toll-free telephone number, (800) 424-9530. Our local telephone number is (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "F. Andrew Turley".

F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket

Attachment
Narrative

96043901316

MUR 4730
THE CAPITAL TIMES

Patrick J. O'Brien, a candidate in the Second Congressional District in Wisconsin, alleges that *The Capital Times* newspaper made in-kind contributions to his three other primary rivals by expressly advocating and promoting their candidacies through coverage of their campaigns without mentioning his own. This allegation mirrors that of a prior complaint filed by Mr. O'Brien against *Madison Magazine* in March 1998 (MUR 4727), which was closed in June 1998.

The Capital Times responds that it had in fact covered Mr. O'Brien's candidacy and was the only newspaper to have included his photograph in a news story. The respondent further asserted that the degree of coverage afforded to the candidates for this congressional race was squarely within its constitutional right to exercise editorial control and judgment over matters included in its newspaper.

In response to the complaint, Tammy Baldwin for Congress states that the decision of *The Capital Times* to cover the campaign is constitutionally-protected activity and that all coverage decisions were made independently of the Committee. Rick Phelps for Congress, in its response, denied that *The Capital Times* had actively promoted the Phelps candidacy in any way, and also denied any involvement in the decisions by the newspaper regarding its coverage of this race. Wineke for Congress did not file a response.

This matter is less significant relative to other matters pending before the Commission.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 2, 1998

Mr. Michael Childers, Treasurer
Tammy Baldwin for Congress
P.O. Box 696
Madison, WI 53701

RE: MUR 4730

Dear Mr. Childers:

On March 31, 1998, the Federal Election Commission notified Kevin C. Myren, former treasurer, of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against Tammy Baldwin for Congress and you, as treasurer. See attached narrative. Accordingly, the Commission closed its file in this matter on October 29, 1998.

The confidentiality provisions of 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 prior to receipt of your additional materials, any permissible submissions will be added to the public record when received.

If you have any questions, please contact Alva E. Smith on our toll-free telephone number, (800) 424-9530. Our local telephone number is (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "F. Andrew Turley".

F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket

Attachment
Narrative

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MUR 4730
THE CAPITAL TIMES

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This matter is less significant relative to other matters pending before the Commission.

98043901319



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 2, 1998

Mr. Dave Zweifel, Editor
The Capital Times
1901 Fish Hatchery Road/PO Box 8060
Madison, WI 53708

RE: MUR 4730
The Capital Times

Dear Mr. Zweifel:

On March 31, 1998, the Federal Election Commission notified J.H. Lussier, Register Agent, of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against The Capital Times. See attached narrative. Accordingly, the Commission closed its file in this matter on October 29, 1998.

The confidentiality provisions of 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 prior to receipt of your additional materials, any permissible submissions will be added to the public record when received.

If you have any questions, please contact Alva E. Smith on our toll-free telephone number, (800) 424-9530. Our local telephone number is (202) 694-1650.

Sincerely,

A handwritten signature in dark ink, appearing to read "F. Andrew Turley".

F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket

Attachment

98043901320

MUR 4730
THE CAPITAL TIMES

Patrick J. O'Brien, a candidate in the Second Congressional District in Wisconsin, alleges that *The Capital Times* newspaper made in-kind contributions to his three other primary rivals by expressly advocating and promoting their candidacies through coverage of their campaigns without mentioning his own. This allegation mirrors that of a prior complaint filed by Mr. O'Brien against *Madison Magazine* in March 1998 (MUR 4727), which was closed in June 1998.

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This matter is less significant relative to other matters pending before the Commission.

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CLOSED

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Mr. F. Andrew Turley,

It was with great disappointment that I read of your decision to not pursue the matter outlined in complaint MUR 4730, my complaint against the three other Democratic candidates for Congress and The Capital Times. What is particularly galling is The Capital Times' assertion that since it published a story that included me, and published my photo alongside said column, it is free of guilt in the matter.

That column was the triggering event for the matter I have described. After that column was published, there was a distinct pattern of reporting in The Capital Times that particularly emphasized the erroneous contention that there were only three candidates for the Democratic nomination in the Second District. It also stands to reason that since they covered me initially, there must have been a reason for the change in policy that followed so quickly on the heels of that particular story. The most absurd example was a letter to the editor with top page placement that outlined "in alphabetical order, the three candidates for Congress." John Nichols' (chief editorial writer) column, on any number of occasions prior to my complaint to the FEC, clearly stated this falsity times too numerous to be coincidental. Unless Mr. Nichols is claiming that he is an ignoramus or admitting himself to be a liar, (which he may be), unless he is saying that he never makes it to page two of his own paper, it stands to reason that he was privy to the above events. I am sure that otherwise Mr. Nichols would not have deliberately lied to his readers on so many occasions.

If he was lying, then it seems logical to assume that he had a reason for lying. This is one question that could be easily answered by Mr. Nichols. Why did he advocate this point so hard after my initial press breakthrough in his own paper last November? It also stands to reason that if Mr. Nichols was involved in the deliberate suppression of my candidacy in his own column, he may have also used his power as editor to exercise influence over the other reporters who wrote on the race. These included Paul Nolen and Chris Murphy among others. In its response I note that The Capital Times does not address the issue of whether or not their editorial discretion evolved from discussions between themselves and members of my opponents' campaigns.

All these things can be checked easily enough by simply scanning through The Capital Times coverage of the Second District race in the weeks following the story they cite as their defense, and asking the reporters a few simple questions about how much authority was exercised over their discussion of the race. In addition, Mr. Nichols and the rest of The Capital Times editorial staff, can and ought to be asked about the nature of their discussions with the other campaigns in the days shortly after my initial breakthrough. It is also worth noting that the story they cite as evidence of their fairhandedness, was written by Bill Dunn, a freelance writer.

It is also of some interest that the Baldwin campaign claims that The Capital Times decisions were constitutionally-protected activity. Implied is a knowledge of the basis for The Capital Times "editorial discretion", something I would not expect from a committee that had no hand in any of the coverage decisions. It seems more an argument that would be made by a newspaper, not a political campaign. If they had no hand in creating the policy, how is it they know that it was constitutionally-protected activity? The argument is no argument or defense at all, but is instead a position of advocacy for The Capital Times, something I might expect from a campaign that may have been partly responsible for helping to initiate the above described activity.

In short, the specific nature of my complaint has not been addressed by the FEC.

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I am asking for the FEC to reconsider its position relative to the above facts. If newspapers can be allowed to use their resources to advocate particular candidates (or advocate against particular candidates), on behalf of or at the behest of political campaigns, then limits on in-kind contributions are no limits at all but instead simply one more campaign-finance regulation to be skirted behind a thin veil of constitutional protection. By acting in league with a political campaign, as an agent for that campaign, a newspaper becomes an extension of that campaign, and as such must be subject to the same laws and restrictions that apply to campaigns. It is my contention that there is a reasonable basis for believing that The Capital Times crossed that line and acted in said way deliberately and knowingly.

Should you find against me, I will note for future reference that the best away to avoid campaign finance restrictions is to simply run one's own newspaper as a transparent tool of advocacy for and against specific candidates for political office. By extension, a television broadcast license would allow the same, thus allowing unlimited amounts of resources to be dedicated to one or several candidates, without regard to campaign finance laws. I have already written a memo on this subject that I am sure members of the Republican and Democratic party organizations will be happy to see, happy to find that these laws can be completely avoided by perversely invoking the sacred protections of the First Amendment.

Patrick J. O'Brien
Patrick J. O'Brien

11/06/98

Signed or attested before me by Patrick J. O'Brien on
11/6/98 at First Federal Savings Bank. Dane County

Darrell Lee Patterson

My Commission expires 7.21.2002



98043701323

CLOSED



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 20, 1998

Mr. Patrick J. O'Brien
525 State Street, #2
Madison, WI 53703

RE: MUR 4730

Dear Mr. O'Brien:

Thank you for your letter that we received on November 9, 1998, regarding the above-captioned closed Matter Under Review.

In your letter asked the Commission to reconsider the action it took with regard to MUR 4730. Please contact me at (202) 649-1650 or 1 800-424-9530 at your earliest possible convenience to discuss your request.

Sincerely,

A handwritten signature in dark ink, appearing to read "F. Andrew Turley".

F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4730

DATE FILMED 12/2/98 CAMERA NO. 3

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