

Congress of the United States
House of Representatives
Washington, DC 20515

December 4, 2000

Lawrence Noble
General Counsel
Federal Elections Commission
999 E Street, NW
Washington, DC 20463

AOR 2000-40

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
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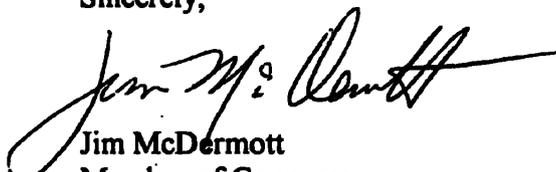
Dear Mr. Noble:

I have set up a legal expense fund that is separate and apart from my principal campaign committee. The purpose of the fund is to pay the legal cost incurred in *Boehner v. McDermott*, a case arising out of legislative activities.

Pete Stark (D) California, and others, have offered to donate excess campaign funds to the legal expense fund, and have authorized me to ask for this opinion as to the legality of such donations.

Thanking you in advance for your prompt response.

Sincerely,


Jim McDermott
Member of Congress

cc: Rosemary Smith, Assistant General Counsel

LAMAR SMITH, TEXAS
CHAIRMAN

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JOE KNOLLENBERG, MICHIGAN
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COUNSEL TO THE RANKING
MINORITY MEMBER

ONE HUNDRED SIXTH CONGRESS

U.S. House of Representatives

COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT

Washington, DC 20515-6328

HOWARD L. BERMAN, CALIFORNIA
RANKING MINORITY MEMBER

MARTIN OLAV SABO, MINNESOTA
ED PASTOR, ARIZONA
CHAKA FATTAH, PENNSYLVANIA
ZOE LOFGREN, CALIFORNIA

SUITE HT-2, THE CAPITOL
(202) 225-7103

October 6, 2000

The Honorable Jim McDermott
U.S. House of Representatives
1035 Longworth House Office Building
Washington, D.C. 20515

Dear Colleague:

This responds to your letter of September 21, 2000 requesting written Committee permission to establish a legal expense fund. As your letter indicates, such permission is required pursuant to the provision of the gift rule on legal expense funds (clause 5(a)(3)(E) of House Rule 26) and the Legal Expense Fund Regulations that the Committee has issued thereunder.

Your letter states that the purpose of the fund would be to pay legal expenses arising from *Boehner v. McDermott*, a matter that is now pending before the Supreme Court. Your letter further indicates that, consistent with the requirements of the Legal Expense Fund Regulations, these expenses have arisen in connection with your official duties and position in Congress, and that the matter is one that bears on your reputation or fitness for office. Enclosed with your letter was a copy of the trust agreement that you and the trustee, William Perry, executed on September 21, 2000.

The Committee hereby grants permission for you to establish a legal expense fund under the terms of the trust agreement that you submitted to the Committee, and to solicit donations for that fund. It appears that the terms of the agreement are consistent with the provisions of the Committee's Legal Expense Fund Regulations. In accordance with Committee Regulation No. 12, a copy of the agreement should be filed with the Legislative Resource Center (B-106 Cannon House Office Building) within one week of the date you receive this letter.

Quarterly reports of donations, contributions and expenditures, including the information stated in paragraph 14 of the trust agreement, must be filed in accord with the schedule provided in Committee Regulation No. 13. In addition, any person who contributes more than \$260 in a calendar year (other than a relative of yours) must be disclosed on Schedule VI of your annual Financial Disclosure Statement.

We also note two other points regarding the trust agreement. First, while your letter states that the fund will be used to pay legal expenses arising from *Boehner v. McDermott*,

The Honorable Jim McDermott

October 6, 2000

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paragraph 2 of the agreement provides more broadly that the purpose of the trust is to pay legal expenses that you incur "in connection with [your] official duties and position in Congress, and matters bearing on [your] reputation or fitness for office." That paragraph goes on to state, consistent with Committee Regulation No. 3, that the trust may not be used to pay any legal expenses that arise in connection with a matter that is "primarily personal in nature." Please contact the Committee for further guidance if any question arises as to whether, under these criteria, a particular expense is properly payable out of the trust. Second, the Committee understands that the agreement provides for the payment of legal services provided to you only, and to no other individual.

If you have any further questions, please contact the Committee's Office of Advice and Education at extension 5-7103.

Sincerely,



Lamar Smith
Chairman



Howard L. Berman
Ranking Minority Member

LS/HLB:jev

Congress of the United States
House of Representatives
Washington, DC 20515

September 21, 2000

Honorable Lamar S. Smith
Chairman
Committee on Standards of Official Conduct
HT 2 - The Capitol
Washington, DC 20515

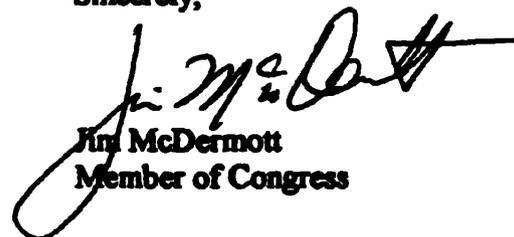
Dear Mr. Smith:

Pursuant to the Legal Expense Fund Regulations issued by the House Committee on Standards of Official Conduct on June 10, 1996, I am writing to you to request written permission to establish a legal expense fund. I wish to establish such a fund in order to pay legal expenses that have arisen in connection with my official duties and position in Congress, and in connection with matters bearing on my reputation or fitness for office. Specifically, these legal expenses arise from *Boehner v. McDermott*, a matter pending before the U.S. Supreme Court.

Enclosed with this letter is a proposed Legal Expense Trust document, which I believe fully complies with all applicable laws, Rules of the House of Representatives, and the Legal Expense Fund Regulations issued by this Committee. If you have any questions concerning this document, or concerning my purpose in establishing this legal expense fund, please do not hesitate to contact me.

I look forward to hearing from you at your earliest convenience.

Sincerely,



Jim McDermott
Member of Congress

Congress of the United States
House of Representatives
Washington, DC 20515

September 21, 2000

Honorable Howard L. Berman
Ranking Member
Committee on Standards of Official Conduct
HT 2 - The Capitol
Washington, DC 20515

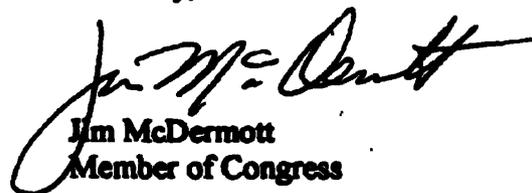
Dear Mr. Berman:

Pursuant to the Legal Expense Fund Regulations issued by the House Committee on Standards of Official Conduct on June 10, 1996, I am writing to you to request written permission to establish a legal expense fund. I wish to establish such a fund in order to pay legal expenses that have arisen in connection with my official duties and position in Congress, and in connection with matters bearing on my reputation or fitness for office. Specifically, these legal expenses arise from *Boehner v. McDermott*, a matter pending before the U.S. Supreme Court.

Enclosed with this letter is a proposed Legal Expense Trust document, which I believe fully complies with all applicable laws, Rules of the House of Representatives, and the Legal Expense Fund Regulations issued by this Committee. If you have any questions concerning this document, or concerning my purpose in establishing this legal expense fund, please do not hesitate to contact me.

I look forward to hearing from you at your earliest convenience.

Sincerely,


Jim McDermott
Member of Congress

THE JIM MCDERMOTT LEGAL EXPENSE TRUST

This Trust Agreement dated this 21 day of September, 2000, by and between Jim McDermott (hereinafter called "Trustor") and William Perry (hereinafter called "Trustee"), establishes the Jim McDermott Legal Expense Trust.

RECITALS

A. The Trustor, who is a member of the United States House of Representatives, has incurred legal expenses in connection with his official duties and position in Congress, and matters bearing on his reputation and fitness for office.

B. It is the desire of the Trustor to provide a proper means to accept transfers of money, property and services, including pro bono legal services, for the sole purpose of defraying the legal costs that have been and will be incurred in connection with his official duties and position in Congress, and matters bearing on his reputation or fitness for office, in a manner consistent with and in compliance with laws of the United States and the District of Columbia, and the Rules of the House of Representatives, including the Code of Official Conduct (Rule 24), the House gift rule (Rule 26), and the Legal Expense Fund Regulations issued by the House Committee on Standards of Official Conduct.

NOW, THEREFORE, in accordance with the above stated purposes, laws and rules, the parties agree as follows:

1. **Trust Property.** The Trustor hereby transfers to the Trustee the sum of \$10. This and all other property, whether real, personal or mixed, delivered, payable to or contributed to the Jim McDermott Legal Expense Trust shall be held by the Trustee, in trust for the sole and specific purposes and on the conditions hereinafter set forth in paragraph 2 below. This Trust shall be known as the Jim McDermott Legal Expense Trust (the "Trust"). All such property, regardless of its form, shall be considered as being contributed or donated to the Trust.

2. **Trust Purpose.** The sole and exclusive purpose of the Trust is to provide a proper means for the acceptance of money, property and services, including, if necessary, pro bono legal services, to provide for all reasonable, necessary and appropriate legal fees or charges incurred by the Trustor in connection with his official duties and position in Congress, and matters bearing on his reputation or fitness for office. To such end, the Trust shall be available to pay all reasonable, necessary and appropriate expenses of the Trustor's counsel and such other and usual, customary expenses that have been or may be incurred in connection with the above-stated purpose. The Trust may not be used to pay any legal expenses that arise in connection with a matter that is primarily personal in nature. Trust funds may be used for no purpose other than that specifically provided herein. All such payments may be made by the Trustee from either principal and/or income.

The Trustor shall have the sole and absolute right to name and designate an attorney or attorneys (and reach a fee agreement) as he may feel are necessary to provide proper legal representation to him for the above purpose and shall so notify the Trustee, in writing, of his choice or choices, as well as the agreed fee arrangement made with each attorney or firm. Thereafter, upon the presentation of properly itemized statements for work done and expenses advanced by said attorney or attorneys to the Trustee, the Trustee shall make payments or disbursement to said counsel and to others, if necessary. The Trustee shall, in his absolute discretion, determine the reasonableness and accuracy of said statement which shall contain a certification by said counsel that said services are necessary, reasonable and proper services and/or expenses incurred on behalf of the Trustor for the purposes set out herein. Payment by the Trustee in accordance with such statement, certification and demand, shall discharge the Trustee from all further liability hereunder, and the Trustee shall not be bound to inquire further into the validity, expediency, reasonableness or propriety of the statement, certification and demand.

3. Qualifications of the Trustee. The Trustee hereunder, or any successor Trustee appointed in accordance with this statement, if an individual, shall be at least 25 years of age. The Trustee shall not have any family, business or employment relationship with the Trustor and shall not be a related or subordinate party, as to the Trustor, within the meaning of Section 672(c) of the Internal Revenue Code of 1986, as amended. The Trustee herein named, and any successor Trustee, warrants and represents to the Trustor that he will at all times faithfully comply with the Legal Expense Fund Regulations issued by the House Committee on Standards of Official Conduct, with all applicable statutes of the United States and the District of Columbia, and with the Rules of the House of Representatives. The Trustee herein named, and any successor, further warrants, represents, and recognizes that he will be acting in a fiduciary capacity and will be bound by the laws of the State of Washington regulating the conduct of such fiduciaries and by the strict terms of this instrument. It is understood that the powers, duties and rights of the Trustee are controlled by said laws and the terms of this instrument which are not inconsistent therewith.

4. Trustee's Powers. The Trustee shall have the powers, which shall be exercised in a fiduciary capacity, to pay all the above reasonable, necessary and appropriate expenses only in strict compliance with paragraph 2 above, and reasonably related to the purpose for which the Trust was established, including, but not limited to, all fees and expenses reasonably related to the legal proceedings and all incurred costs of administering the Trust. The Trustee, without diminution or restriction of the powers vested in by law, or elsewhere in this instrument, and subject to all other provisions of this instrument, without the necessity of procuring any judicial authorization therefor, or approval thereof, shall be vested with, and in the application of his best judgment and discretion on behalf of the Trustor, shall be authorized to exercise, the powers specifically enumerated as follows:

a. During the Trustee's administration of the Trust and subject to all the other provisions of this instrument, to receive all of the assets of the Trust, and to have exclusive possession and control thereof; all such assets shall be maintained in an account

or accounts, established for the exclusive purpose of administering the Trust, and segregated from the personal, political, or official funds of the Trustor;

b. To enter into contracts binding upon the Trust (but not upon the Trustee in his individual capacity) which are reasonably incident to the administration of the Trust, and which the Trustee in the exercise of his best judgment believes to be for the best interests of the Trust;

c. To settle, by compromise or otherwise, claims or demands against the Trust, or held on behalf of the Trust;

d. To pay any federal, state and local taxes, should any be deemed to exist which are incurred as a result of the creation, operation, or administration of the Trust;

e. To invest liquid assets of the Trust, and from time to time exchange or liquidate such assets, pending distribution thereof, if and when such investments in the judgment of the Trustee will not impede or delay distribution thereof pursuant to the provisions of this instrument or as otherwise by law required, and in the judgment of the Trustee are advisable and for the best interests of the Trust;

f. To retain investments which initially come into the hands of the Trustee among the assets of the Trust, without liability for loss or depreciation or diminution in value resulting from such retention, so long as in the judgment of the Trustee it is not clearly for the best interests of the Trust, that such investments be liquidated, although such investments may not be productive of income or otherwise may not be such as the Trustee would be authorized to make;

g. At any time, and from time to time, to keep all or any portion of the Trust in liquid form, uninvested, for such time as the Trustee may deem advisable, without liability for any loss of income occasioned by so doing;

h. To deposit funds of the Trust in one or more accounts carried by the Trustee, in a clearly specified fiduciary capacity, in any one or more banks and/or trust companies whose deposits are insured under the provisions of the Federal Deposit Insurance Act as now constituted or as the same may be hereafter amended; and if the Trustee be itself a bank or a trust company, and is otherwise qualified, it may serve as such depository;

i. To deposit for safekeeping with any bank or trust company (including the Trustee itself if it is a bank or a trust company) any negotiable or nonnegotiable securities or other documents constituting assets or records of the Trust;

j. To bring and prosecute or to defend actions at law or in equity for the protection of the assets or interests of the Trust or for the protection or enforcement of the provisions of this instrument;

k. To employ attorneys, accountants, or other persons whose services may be necessary or advisable, in the judgment of the Trustee, to advise or assist him in the discharge of his duties, or in the conduct of any business constituting an asset of the Trust, or in the management, maintenance, improvement, preservation or protection of any property of the Trust, or otherwise in the exercise of any powers vested in the Trustee;

l. To procure and pay premiums on policies of insurance to protect the Trust or any of the assets thereof, against liability for personal injuries or property damage, or against loss or damage by reason of theft, embezzlement or other hazards against which such insurance is normally carried in connection with activities or on properties such as those with respect to which the Trustee procures such insurance;

m. To exercise in person or by proxy (with or without a power of substitution vested in the proxy) all voting rights incident to the ownership of corporate stock or the other securities constituting assets of the Trust; and to exercise all other rights and privileges incident to the ownership of such securities, including but not limited to the right to sell, exchange, endorse or otherwise transfer such securities, to consent to (or oppose) reorganizations, consolidations, mergers, or other proposed corporate actions by the issuer of such securities, to exercise or decline to exercise options to purchase additional shares or units of such securities or of related securities, and to pay all assessments or other expenses necessary (in the judgment of the Trustee) for the protection of such securities or of the value thereof; and

n. To do any and all other things, not in violation of any other terms of this instrument, which, in the judgment of the Trustee, are necessary or appropriate for the proper management, investment, and distribution of the assets of the Trust in accordance with the provisions of this instrument, and in his judgment are for the best interests of the Trust and the Trustor.

The Trustee shall be specifically authorized to exercise any and all powers to manage, maintain, improve, and preserve the Trust, paying reasonable, necessary and appropriate expenses incurred in soliciting, seeking or arranging for the acquisition of additional Trust property in accordance with paragraph l above. Such reasonable, necessary and appropriate expenses may include expenses incurred by the Trustor, members of the Trustor's immediate family, and agents of the Trustor rendering services to the Trust or to the Trustee in furtherance of the Trustee's exercise of this power; provided, however, that no such expenses incurred by the Trustor, by any member of the immediate family of the Trustor, or by any agent of the Trustor may be paid by the Trustee unless the Trustee has authorized the expenses in advance and has received documentation of the expenses incurred in a manner or in a form which he deems appropriate and consistent with the purposes, terms and conditions of the Trust.

In addition to the powers enumerated above, the Trustee shall, subject to applicable law, determine in his sole discretion what is income and what is principal, to allocate to income or principal or apportion between them any receipt, gain, loss or

expenditure as is deemed just and equitable in the circumstances of each case, as it arises. The exercise by the Trustee of any discretion granted hereunder in good faith shall be binding and conclusive on all persons.

5. **Compensation of the Trustee.** The Trustee, if an individual, may be compensated from either income or principal of the Trust in accordance with the usual and customary rates for such services. In the event that the Trustee shall be the trust department of a national banking institution, the Trustee shall be compensated in accordance with the usual, customary and published Trustee's rates of said institution for a trust of this type and size. The Trustee may waive compensation.

6. **Prohibited Contributions.** The Trustee may not knowingly accept any gift or donation that is prohibited by or is in excess of the limits established by the Legal Expense Fund Regulations issued by the House Committee on Standards of Official Conduct, or that is prohibited by any other laws, rules or regulations governing such contributions as interpreted by the House Committee on Standards of Official Conduct. In particular:

a. The Trust shall not knowingly accept more than \$5,000 in a calendar year from any individual or organization.

b. The Trust shall not knowingly accept any contribution from a registered lobbyist or an agent of a foreign principal.

If any prohibited contribution is inadvertently accepted, the Trustee shall as soon as practical after becoming aware of the prohibited nature of the contribution, return it in its entirety to the donor (if from a prohibited source) or return the excess over \$5,000 to the donor (if prohibited because of the amount).

7. **Non-Disclosure and Disclosure Provisions.** The Trustee is authorized and directed to comply fully and completely with the Ethics in Government Act of 1978, as amended, and to supply to the Trustor or his agent any and all information regarding contributions, gifts and expenditures as may be necessary and required by law to permit the Trustor to comply fully with the Legal Expense Fund Regulations issued by the House Committee on Standards of Official Conduct, the Ethics in Government Act of 1978, as amended, and any other applicable law regarding disclosure or reporting requirements for Members of Congress.

8. **Term of Trust and Disposition of Assets.** The term of the Trust shall be for an initial period of ten (10) years and shall be irrevocable. In the event, in the sole and absolute discretion of the Trustee, the purposes for which the Trust is created are fulfilled or no longer exist prior to the expiration of ten (10) years from the date of this instrument, the Trustee shall terminate the Trust. In the sole discretion of the Trustee, if he determines that the purposes for which the Trust is created have not been completed or still exist at the expiration of said ten (10) year period, the Trustee may extend said period by such time as he deems appropriate.

Upon the completion of the Trust, any funds, assets or property of any kind, character, and description, whether the same be principal or income which may be remaining in the hands of the Trustee after compliance with paragraph 2 above, shall be distributed by the Trustee, in the sole and absolute discretion of the Trustee, to the contributors to the Trust, pro rata.

9. Successor Trustees. In the event that the original named Trustee herein shall desire at any time to be relieved of his duties herein, the Trustee may resign by written notice to the Trustor, who may appoint a successor Trustee with the qualifications set forth in paragraph 3 above, and as approved by the House Committee on Standards of Official Conduct, as required by paragraph 13 below. The Trustor shall have the same power to appoint a substitute Trustee in the event of the death, incapacity, or failure to act in accordance with the terms of this instrument of any Trustee. In the event of the Trustor's inability to act as a result of incapacity or other reasonable cause, the proper legal representative of the Trustor shall have the right and authority to seek the appointment of a substitute Trustee in any court of competent jurisdiction for such purposes in the State of Washington.

10. Liability of the Trustee and Bond Requirements. Neither the Trustee nor any successor trustee shall be required to give bond for the faithful and proper performance of the Trustee duties hereunder. The Trustee or any successor trustee may, however, in his, her or its absolute discretion, purchase a bond in such amount as the Trustee or any successor trustee deems proper and pay the premium(s) from Trust funds.

11. Trustee's Accounts. The Trustee shall keep or, in the Trustee's sole and absolute discretion, shall cause others to keep, accurate written records and books of account of the Trust property, showing the manner in which the Trust property is invested and all receipts, disbursements, and other transactions involving the Trust property. All such records and books of account shall be the property of the Trustee during the duration of the Trust and they, together with the Trust property and all reasonable evidence thereof, plus any accounts, shall not be made available to the Trustor during the Trust term except as hereinafter provided or as required by applicable law.

12. Situs. It is the intent and desire of the parties of this instrument that the Trust be considered a Washington trust, and its terms shall be construed and shall be administered in accordance with the laws of the State of Washington.

13. Invalidity and Amendments. In the event that any provision of this instrument shall be determined or found to be invalid, illegal, unethical, or improper in any manner by the House Committee on Standards of Official Conduct, or any other appropriate authority, the Trustee shall have the right to make such written amendments to this instrument as may be necessary to comply with such determination or finding. Any such provision prohibited by law or unenforceable in any manner shall not affect the remaining provisions of this instrument. In the event that such invalidity cannot be corrected, the Trustee shall terminate the Trust in accordance with paragraph 8 above. No amendment of this agreement, or successor or substitute Trustee appointment, will be

effective without written approval of the House Committee on Standards of Official Conduct.

14. Disclosure and Reporting Requirements. The Trustee shall file, and the Trustor will personally sign, quarterly reports with the House Committee on Standards of Official Conduct and the Legislative Resource Center, disclosing contributions to and expenditures of the Trust in accordance with paragraph 13 of the Legal Expense Fund Regulations issued by the House Committee on Standards of Official Conduct, including the name and street address of each person required to be listed, as well as the dollar amount of each contribution (or group of contributions) and each expenditure required to be disclosed, as well as any disbursement to the Trustor or members of his immediate family to defray the costs of any expenses incurred in soliciting, seeking, or arranging for the acquisition of Trust property by date, dollar amount, and purpose.

IN WITNESS WHEREOF, the Trustor and the Trustee have signed this instrument, both parties intending that they shall be bound and that the Trust shall take effect on this date.

WITNESS our signatures this 21 day of September, 2000.


JIM MCDERMOTT, TRUSTOR

DISTRICT OF COLUMBIA)
) ss.
)

SUBSCRIBED AND SWORN to before me this 21 day of September, 2000


Notary Public

My Commission Expires:

Kevin Kelley
Notary Public, District of Columbia
My Commission Expires 12-14-04

William H. Perry
WILLIAM PERRY, TRUSTEE

DISTRICT OF COLUMBIA)
) ss.
)

SUBSCRIBED AND SWORN to before me this 21 day of September, 2000

Kevin Kelley
Notary Public

My Commission Expires:

Kevin Kelley
Notary Public, District of Columbia
My Commission Expires 12-14-04