

WILLIAM J. OLSON, P.C.

ATTORNEYS AT LAW

8180 GREENSBORO DRIVE, SUITE 1070
MCLEAN, VIRGINIA 22102-3823

TELEPHONE (703) 356-5070

FAX (703) 356-5085

WILLIAM J. OLSON
(D.C., VA.)

JOHN S. MILES
(D.C., MD., VA., OF COUNSEL)

ALAN WOLL
(VA.)

JOHN F. CALLENDER, JR.
(FL. ONLY)

GILMAN & PANGIA
(OF COUNSEL)

1815 H STREET, N.W.
SUITE 600
WASHINGTON, D.C. 20006-3604
TELEPHONE (202) 223-9066
FAX (202) 331-8986

May 8, 1998
HAND DELIVER

MUR 4743

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

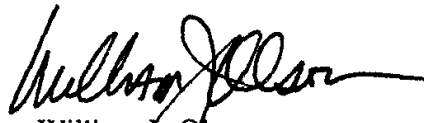
Re: In the Matter of the National Republican Congressional Committee,
Congressman William F. Goodling,
Bill Goodling for Congress Committee,
and Lewis E. Elicker, III, Treasurer

Dear Mr. Noble:

Enclosed please find the verified Complaint of Garry C. Kling, our client, that is hereby submitted to you for filing and action pursuant to section 309 of the Federal Election Campaign Act, 2 U.S.C. section 437g(a). The original and three copies are included.

Please address any inquiries, correspondence, and information in this matter to the undersigned. Thank you for your attention to this matter.

Sincerely yours,


William J. Olson

WJO:mm
Enclosures

99 "04" 391 "33" 40" 66

REC'D 11/10/98

Respondents

4. Respondents are designated as such based on information and belief and may not include all persons or entities that should be designated as respondents if the Commission determines that there is reason to believe that violations of the Federal Election Campaign Act have occurred. The designated respondents are as follows:

a. The **National Republican Congressional Committee** is a committee of the National Republican Party, and is a political committee, as defined in section 102.1(d) of the Regulations, 11 C.F.R. section 102.1(d), a party committee, as defined in section 100.5(e)(4) of the Regulations, 11 C.F.R. section 100.5(e)(4), and also a multi-candidate committee as defined in section 100.5(e)(3) of the Regulations, 11 C.F.R. section 100.5(e)(3).

b. **Congressman William F. Goodling** is the incumbent United States Representative of the 19th District of Pennsylvania, where he was first elected in 1974 and has served for twelve terms, and is a declared candidate in the primary election for the Republican nomination for that Congressional seat in 1998.

c. **Bill Goodling for Congress Committee** is the principal campaign committee of respondent Goodling, as defined in 2 U.S.C. section 431(5) and 11 C.F.R. section 100.5(e)(1), and is the authorized committee of respondent Goodling, as defined in 2 U.S.C. section 431(6) and 11 C.F.R. section 100.5(f)(1).

d. **Lewis E. Elicker, III**, is, and at all pertinent times has been, the Treasurer of the *Bill Goodling for Congress Committee*.

SEE "16E" NO "66

Respondents' Actions In Issue

5. Respondents have joined forces, and are cooperating and working together, in an effort to elect respondent Goodling as the Republican Party's nominee for Pennsylvania's 19th District Congressional seat in a Republican primary election to be held on May 19, 1998. This fact has been widely referenced in a number of reports to the public, including the items identified in the following paragraphs.

6. a. An article published by *Roll Call*, the Capitol Hill newspaper, on April 13, 1998, reported that respondent National Republican Congressional Committee had stepped in to rescue respondent Goodling's primary election campaign, and had assumed control over the campaign. According to the article, respondent Goodling

is being challenged in the GOP primary by Charles Gerow, an attorney and college professor. Gerow took 45 percent against Goodling, the Education and the Workforce chairman, in the 1996 GOP contest [*Roll Call* article, p. 1.]

The article details a number of facts indicating that respondent National Republican Congressional Committee has become aware of the risk that respondent Goodling will be unseated in the Republican primary election, and has taken steps to intervene in the primary election to help effect respondent Goodling's nomination. For example:

According to GOP sources, Gingrich met with Goodling and NRCC chairman John Linder (R-Ga) two weeks ago to discuss "doubling up" Goodling's campaign operations. Kevin Talley, the staff director for the Education and the Workforce Committee, said the chairman welcomes Gingrich's interest in his race....

Republican sources stressed that with the added help, they are confident that Goodling will come through the primary, less than two months away. [*Roll Call* article, p. 2.]

A copy of the *Roll Call* article is attached hereto as Exhibit A.

b. To the extent that respondent National Republican Congressional Committee has made or will make such expenditures in support of respondent Goodling's primary election campaign, the value of such expenditures constitute or will constitute in-kind contributions to respondents Goodling, Bill Goodling for Congress Committee, and Lewis E. Elicker, III, Treasurer. See 2 U.S.C. sections 431(8)(A)(i), (ii); 11 C.F.R. sections 100.7(a)(1)(iii), (3). If such in-kind contributions, alone or in conjunction with other contributions and coordinated expenditures for the benefit of the Goodling campaign should exceed \$5,000, as they surely do (or will) if the facts reported in the *Roll Call* article are accurate, the respondents are (and/or will be) in violation of the FECA. See 2 U.S.C. section 441a(a)(2)(A); 11 C.F.R. section 110.2(b)(1).

7. a. In an article published by the Associated Press Political Service on April 14, 1998, it was reported that respondent National Republican Congressional Committee will offer resources to respondent Goodling, "likely" including a \$5,000 cash contribution, as well as "direct mailings, radio and newspaper advertising, advice and organizational changes." According to the Associated Press Political Service article, respondent National Republican Congressional Committee is intervening in the Goodling primary campaign to help that campaign defeat the efforts of Mr. Gerow, the Republican challenger, in the Republican primary election. For example, the article states:

A veteran House member who nearly lost the Republican primary in 1996 will be getting some campaign help from Washington....

The Patriot-News of Harrisburg, Pa., reported that House Speaker Newt Gingrich initiated the effort because of concerns that

Goodling could lose next month's primary challenge from lawyer Charles Gerow....

The NRCC routinely helps GOP candidates seeking House offices but generally focuses its resources on challengers and less-senior incumbents Veterans generally have no trouble winning on their own.

Goodling was caught off guard two years ago when Gerow won 45 percent of the primary vote.

As he did two years ago, Gerow is mounting an aggressive grassroots effort against Goodling, claiming he has served too long and is out of touch with voters, and criticizing him for refusing to debate. [Associated Press Political Service article, p. 1.]

A copy of the Associated Press Political Service article is attached hereto as Exhibit B.

b. To the extent that respondent National Republican Congressional Committee has expended or will expend such resources for respondent Goodling and respondent Bill Goodling for Congress Committee, as reported in Exhibit B, such resources constitute or will constitute contributions to the Goodling campaign and to respondents Goodling and Bill Goodling for Congress Committee in excess of the \$5,000 maximum contribution permitted by law. See 2 U.S.C. section 441a(a)(2)(A); 11 C.F.R. section 110.2(b)(1).

8. a. An advertisement aired on radio stations throughout the 19th Congressional District of Pennsylvania recently has urged Pennsylvania citizens to vote for Congressman Bill Goodling in the upcoming Republican primary election for the 19th Congressional District of Pennsylvania. The advertisement's disclaimer, in respondent Goodling's own voice, said that the ad was "Paid for by the National Republican Congressional Committee and authorized by the Bill Goodling for Congress Committee."

b. To the extent that respondent National Republican Congressional Committee has been involved in producing and/or has paid for radio advertisements such as reflected by the advertisement described in subparagraph 8a above, such efforts and payments constitute coordinated in-kind contributions to respondents Goodling and the Bill Goodling for Congress Committee, which on information and belief, when coupled with other contributions made to the Goodling campaign by respondent National Republican Congressional Committee, have exceeded or will exceed the maximum contributions permitted by law. See 2 U.S.C. section 441a(a)(2)(A); 11 C.F.R. section 110.2(b)(1).

Provisions of the FECA Allegedly Violated by Respondents' Actions

2 U.S.C. section 441a(a)(2)(A)

9. Multi-candidate political committees such as the NRCC may make no contribution to a candidate and/or the candidate's authorized political committee exceeding \$5,000 per election, pursuant to section 441a(a)(2)(A) of the FECA, 2 U.S.C. section 441a(a)(2)(A).

10. To date, complainant has no personal knowledge about any direct contribution of funds by respondent National Republican Congressional Committee to respondent Goodling and/or his campaign committee in excess of \$5,000 with respect to the May 19, 1998 primary election referred to above, but on information and belief, including the facts set forth above, such contributions, exceeding the statutory maximum of \$5,000, have been or will be made. In addition, on information and belief, respondent National Republican Congressional Committee has made, or will make, by virtue of the expenditures described above and in Exhibits A and B hereto, coordinated in-kind contributions to respondents Goodling and/or his

campaign committee in an amount exceeding \$5,000. This is, or would be, a violation of 2 U.S.C. section 441a(a)(2)(A).

2 U.S.C. section 441a(d)

11. As a multi-candidate committee, respondent National Republican Congressional Committee is limited by law with respect to the contributions it may make to any federal candidate and such candidate's authorized committee, and that limit (including the aggregate of all cash and in-kind contributions), as discussed above, is \$5,000 for the primary election. 2 U.S.C. section 441a(a)(2)(A). Once that limit is reached, respondent National Republican Congressional Committee may make no contribution (and no expenditure of any kind) to or for the benefit of the candidate (including the candidate's authorized committee) in connection with the primary election when the candidate has already benefitted by a \$5,000 primary contribution.

12. In the 1998 general election, of course, the national and state party committees may each also make a further \$5,000 general election contribution as well as coordinated party expenditures in favor of a candidate in the amount of \$32,550, pursuant to 2 U.S.C. section 441a(d). That provision of the FECA contains the sole statutory authority for party committees to make expenditures over \$5,000 in a federal general election, and limits expenditures by the national committee of a political party [and certain state committees] to \$32,550 for the 1998 general election in the case of a candidate for election to the office of Representative, Delegate, or Resident Commissioner in any [State which is entitled to more than one Representative]. Section 441a(d) grants no separate authority to respondent National Republican Congressional Committee to make contributions or expenditures, including

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coordinated expenditures with respondents, in support of the primary election campaign of respondent Goodling. Accordingly, the actions of respondent National Republican Congressional Committee in making contributions and coordinated expenditures in excess of \$5,000 in support of Congressman Goodling's primary campaign, and the actions of respondents Goodling, Bill Goodling for Congress Committee, and Lewis E. Elicker, III, Treasurer, in accepting such contributions and in helping to coordinate such expenditures, violate section 441a(d) of the Federal Election Campaign Act.

13. The law is clear that the coordinated party expenditures permitted by 2 U.S.C. section 441a(d) may only be made in connection with a general election:

The national committee of a political party, or a State committee of a political party, including any subordinate committee of a State committee, may not make any expenditure in connection with the **general election** campaign of a candidate for Federal office in a State who is affiliated with such party which exceeds — in the case of a candidate for election to the office of Representative, Delegate, or Resident Commissioner in any [State which is entitled to more than one Representative], \$10,000 [now \$32,550]. [2 U.S.C. § 441a(d)(3)(B) (emphasis added).]

The regulations, at 11 CFR § 110.7(b)(1), contain the same limitation:

The national committee of a political party, and a State committee of a political party, including any subordinate committee of a State committee, may each make expenditures in connection with the **general election** campaign of a candidate for Federal office in that State who is affiliated with the party. [Emphasis added.]

The FEC's Campaign Guide for Political Party Committees (August 1996), at page 16, echoes the general election focus of the statute and regulation, stating that “[c]oordinated party expenditures may be made in connection with the **general election only**,” and that “[t]here is only one coordinated party expenditure limit per candidate (it applies only to the **general**

election candidate).” (Emphasis added.) The FEC’s Campaign Guide for Congressional Candidates and Committees (December 1995), at page 16, states that the “party’s national committee has a spending limit for each U.S. Senate and House **nominee in the general election.**” (Emphasis added.) Respondent Goodling may be the incumbent, but he is not the nominee of the party in the 1998 general election.

14. All of the respondents’ actions complained of herein have been made in connection with respondent Goodling’s primary election campaign. Thus, there is no possible justification for respondent National Republican Congressional Committee contributing or expending more than \$5,000 for the benefit of the Goodling campaign, and there would be no possible justification available to the other respondents for accepting contributions or coordinating efforts with the NRCC so that they may receive the benefit of expenditures in excess of \$5,000. Clearly, based upon the facts set forth above, respondent National Republican Congressional Committee has taken an interest in respondent Goodling’s *primary* election effort. The situation does not even remotely resemble that of a party committee making coordinated expenditures on a candidate’s behalf in connection with the general election, as is permitted in very limited circumstances not applicable here. *See* Advisory Opinion 1984-15. If the respondents were to advance such an argument, they would be flying in the face of the true facts, which include the fact that respondent Goodling is involved in a very hotly contested primary election.

15. The May 19, 1998 Republican primary election in Pennsylvania’s 19th Congressional District is being vigorously contested, and should be distinguished from other situations in which Republican candidates are unopposed in a primary election. By supporting

the Republican candidate in an uncontested primary, the party committee (*e.g.*, the NRCC) can argue that it is working for success in the general election. Where, as here, the primary election is vigorously contested, financial support by the party committee of one Republican candidate over another is divisive and represents a misapplication of the party's funds.

16. Another adverse consequence, if respondent National Republican Congressional Committee attempts to defend its action by contending that it is in the process of making advance coordinated expenditures in reliance on 2 U.S.C. section 441a(d), would arise if respondent Goodling should lose the primary election. Should the NRCC exhaust the full amount of coordinated party expenses for respondent Goodling, the NRCC might be barred from making any coordinated party expenditures in the general election for Mr. Gerow. Surely, if the respondents rely on a defense based upon an alleged right to make advance coordinated party expenditures, such a strained, inapplicable theory would merely underscore an egregious breach of duty in view of the limitation on political committee expenditures in force under current law.

17. By lending excessive financial support to a 12-term Republican incumbent over a respected and respectable Republican challenger, respondent National Republican Congressional Committee is sending a very definite message to Republican contributors throughout the country, as well as to the Federal Election Commission. The message appears to be one of entrenchment and refusal to listen, both to the voters and to the enforcers of the law. Party funds should not be used simply to keep incumbents in office and to defeat challengers who would bring new spirit and strength to the Republican Party. In the present

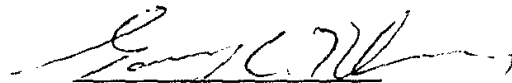
circumstances, moreover, such misuse of party funds would appear to be coupled with a violation of federal election law.

18. Based upon the foregoing, complainant believes that respondent National Republican Congressional Committee has made, and/or will make, significant contributions to the Goodling campaign, beyond the \$5,000 in permissible primary contributions, making an untold amount of expenditures which cannot be coordinated party expenditures but which would be excessive in-kind contributions made in connection with the primary election campaign of respondent Goodling, in clear violation of sections 441a(a)(2)(A) and 441a(d) of the Federal Election Campaign Act.

19. Respondents appear to be involved in a concerted effort to exceed and avoid the contribution and expenditure limits set forth in the FECA in connection with the primary election campaign of respondent Goodling.

WHEREFORE, complainant asks that the Federal Election Commission place the above matter under review and, after expeditious and prompt investigation, and if the evidence should warrant, find reason to believe that the respondents are in violation of the Federal Election Campaign Act.

Respectfully submitted,



Garry E. Kling
615 North Hartley Street
York, Pennsylvania 17404

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Roll Call

April 13, 1998

LENGTH: 1131 words

HEADLINE: NRCC To Control Goodling Campaign By Rachel Van Dongen and Jim VandeHei

BODY:

Prompted by House Speaker Newt Gingrich (Ga), the National Republican Congressional Committee has launched a full-scale effort to rescue Rep. Bill Goodling (R-Pa) from possible defeat in his May 19 primary.

Goodling, who was first elected to his York-based district in 1974, is being challenged in the GOP primary by Charles Gerow, an attorney and college professor. Gerow took 45 percent against Goodling, the Education and the Workforce chairman, in the 1996 GOP contest.

According to GOP sources, the Speaker first became concerned about Goodling's re-election prospects in a Republican leadership meeting a month ago.

Gingrich expressed particular concern, the Republicans said, that the 24-year Congressman did not have the trappings of a "modern" campaign operation, and directed the NRCC to revamp Goodling's campaign operation from Washington.

"Internally, Newt's number-one priority is to save Bill Goodling," said one GOP leadership source. "The NRCC has taken over the race and they're doing it all."

According to GOP sources, Gingrich said: "At some point, (Goodling) will have to learn to run a modern campaign operation."

The Speaker's campaign spokesman, Mike Shields, could not be reached for comment.

Until the NRCC stepped in, Goodling's campaign operation was an all-volunteer force headed by Marilyn Fehrenbach, an unpaid campaign manager who has been with Goodling's campaign since 1996 and before that worked on a number of local races.

"We do everything out of this office, including mailings," Fehrenbach said. "It's all volunteers."

Fehrenbach estimated Goodling's entire volunteer network at 500 people and said about ten volunteers staff the campaign on a daily basis.

But Gerow, whose campaign message smacks of the revolutionary fervor that characterized many GOP challengers in 1994, may not be Goodling's only problem.

Conservative activist Gary Bauer, known for his controversial television ads

spotlighting partial-birth abortion, has already given \$5,000 to Gerow and could get more involved. No one at Bauer's Campaign for Working Families PAC was available to comment.

According to GOP sources, Gingrich met with Goodling and NRCC chairman John Linder (R-Ga) two weeks ago to discuss "doubling up" Goodling's campaign operations. Kevin Talley, the staff director for the Education and the Workforce Committee, said the chairman welcomes Gingrich's interest in his race.

"All the help that he can get in raising money and getting organizational support put together, he's delighted with," Talley said.

As for Bauer's involvement, Talley said Goodling "finds it very strange" given the fact he is pro-life and received a number of letters of commendation from Bauer over the past year during the battle over national education testing.

Fehrenbach, who will remain with the campaign, said she, too, will be happy with any help from Washington.

"I absolutely do welcome it," she said. "Any kind of help we can get would be certainly appreciated."

In an interview, Gerow said the Speaker's efforts on Goodling's behalf were only to be expected.

"You would expect the incumbents to gather around their fellow incumbents. They have circled the wagons before," he said. "The fact that there is such a concerted effort on the part of the Speaker and his friends is clear evidence that we're doing well in this little part of America."

Republican sources stressed that with the added help, they are confident that Goodling will come through the primary, less than two months away.

"We should be able to bring this home," said one Republican familiar with the race. "This is not a loser. Now that everything's in place, the worst-case scenario is a 52 to 48 win."

"Obviously, Gerow received 45 percent last time. That's why we play in that district," said Marjorie Strayer, the NRCC's director of Member retention.

And, said the Republicans, there are some skeletons in Gerow's closet that they will not hesitate to extract if necessary.

"If things begin to go south, there's plenty of ammunition to blow Charlie Gerow out of the water," said one GOP source.

The NRCC effort is being coordinated by Mike Scanlon, the NRCC's incumbent retention field representative, and will bring on board pollster Tony Fabrizio, media consultant Larry McCarthy, and James MacKay, who managed the special election of Rep. Vito Fossella (R-NY), as political director. Both Fabrizio and McCarthy have worked with Goodling before.

The House GOP leadership is also rallying around the chairman to help with fundraising. House Majority Leader Dick Armey (Texas) will travel to Pennsylvania this week to host a fundraiser with Goodling, while House Majority

Whip Tom DeLay (Texas) and Gingrich will also attend events.

Republicans can take heart from a poll conducted for the NRCC and the Goodling camp in mid-March that showed Goodling leading Gerow in a head-to-head ballot test, 72 to 17 percent. The survey, taken by Fabrizio McLaughlin & Associates of 400 "highly likely" primary voters, showed Goodling with a 62 percent re-elect margin, and claims the voters' mood is better for incumbents than it was two years ago.

But while the numbers appear formidable, Republicans warn they are nearly identical to a similar 1996 survey and do not account for what could be an extremely low turnout election.

They say that turnout in the 19th in 1996 was lower than it had been in 20 years, and could take a downward turn this year due to the fact that there are no competitive races at the top of the ballot. Pennsylvania Gov. Tom Ridge (R) and Sen. Arlen Specter (R) are up for re-election, but neither faces serious primaries.

In 1996, Goodling beat Gerow by a mere 4,314 votes in the primary, but went on to handily win the general with 63 percent in a district that gave Bob Dole a 14-point victory margin.

Gerow, the former state chairman of the anti-tax group Citizens Against Government Waste, is attacking the chairman for simply having been in office too long.

"You can't change Washington, DC, if you've been part of it for a generation, and Bill Goodling has been in Congress since I was a teenager," he said.

Gerow has been hammering the chairman on term limits (Gerow has pledged to limit his own tenure to three terms), the "so-called" balanced budget agreement, reforming the IRS and the GOP's "missed opportunities."

But Goodling's campaign has worked to mend fences with key conservative groups, like the Christian Coalition and Americans for Tax Reform, that were not helpful in 1996.

Over the past year, Goodling has received letters from the likes of Phyllis Schlafly and Bauer, praising him for stopping funding to the Education Department for national education testing.

LANGUAGE: ENGLISH

LOAD-DATE: April 13, 1998

The Associated Press Political Service
The Campaign News

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LENGTH: 519 words

DATE: April 14, 1998

DATELINE: WASHINGTON

BODY:

A veteran House member who nearly lost the Republican primary in 1996 will be getting some campaign help from Washington.

The National Republican Congressional Committee, the political arm for House Republicans, will offer resources to Rep. William Goodling, R-Pa., the chairman of the House Education and the Workforce Committee.

Marilyn Fehrenbach, Goodling's campaign manager, said she welcomed the effort but disputed characterizations in published reports that the campaign committee was launching a full-scale rescue.

The Patriot-News of Harrisburg, Pa., reported that House Speaker Newt Gingrich initiated the effort because of concerns that Goodling could lose next month's primary challenge from lawyer Charles Gerow.

For Goodling's campaign, the move will likely mean a maximum \$5,000 cash contribution from the committee, direct mailings, radio and newspaper advertising, advice and organizational changes - including top GOP personnel in key roles, the Patriot-News said.

So far, Goodling's campaign has been run by volunteers.

The NRCC routinely helps GOP candidates seeking House offices but generally focuses its resources on challengers and less-senior incumbents, including Rep. Jon Fox in suburban Philadelphia. Veterans generally have no trouble winning re-election on their own.

Goodling was caught off guard two years ago when Gerow won 45 percent of the primary vote.

As he did two years ago, Gerow is mounting an aggressive grassroots effort against Goodling, claiming he has served too long and is out of touch with voters, and criticizing him for refusing to debate.

Gerow also criticized Goodling as a moderate representing a conservative district. Conservative activists such as Grover Norquist and Gary Bauer have campaigned with Gerow.

The Campaign News April 14, 1998

Goodling's supporters deny that his campaign is in trouble. The real threat for Goodling is voter turnout, they said, adding that a couple of thousand votes could decide the race.

G: Terry Madonna, a political analyst at Millersville University, told The Associated Press that Goodling appeared to be in good shape but wasn't immune from defeat.

"Gerow is young, aggressive," Madonna said. "Goodling has an attitude that 'People know me. People can put me back or not put me back.' He doesn't go out of his way to defend what he does."

Mary Crawford, an NRCC spokeswoman, acknowledged that Republicans cannot ignore the 1996 primary results.

"It would be foolhardy from a political standpoint to do that," she said.

The district, which comprises York, Adams and part of Cumberland counties, votes overwhelmingly Republican. The winner of the primary usually goes on to win the general election handily.

Goodling will be aided by a stream of senior Republican leaders who will visit the district to campaign and help raise money.

House Majority Leader Dick Armey, R-Texas, will hold a tax-day news conference with Goodling Wednesday and a breakfast on Thursday. House Whip Tom DeLay, R-Fla., also has committed to campaign with Goodling in the next month. Gingrich has visited twice in the last 14 months for fund-raisers.

LANGUAGE: ENGLISH

LOAD-DATE: April 14, 1998