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Re: Comments on AO 2011-20 (Schmidt for Congress)

Dear Mr. Herman:

Pursuant to 11 C.F.R. 112.3(a), I submit these comments on the request for an advisory opinion filed recently by Schmidt for Congress. The Commission released the Schmidt for Congress request to the public on October 18, 2011 and designated it as AO 2011-20. In its request, Schmidt for Congress asked the Commission to permit Schmidt for Congress to pay legal expenses of Rep. Schmidt. For the following reasons, I believe that the Commission should refuse to rule on the request at this time.

I. Schmidt for Congress' Request is Disingenuous

A. Rep. Schmidt does not have a legal bill to pay

A "written advisory opinion request shall set forth a specific transaction or activity that the requesting person plans to undertake or is presently undertaking and intends to undertake in the future. Requests presenting a general question of interpretation, or posing a hypothetical situation, or regarding the activities of third parties, do not qualify as advisory opinion requests."¹

In AO 2011-20 Schmidt for Congress claims to seek permission to use campaign funds to pay legal fees resulting from the filing of two amicus briefs. However, as the recent House Ethics Committee investigation into the payment scheme between Rep. Schmidt and the Turkish Coalition of America revealed, Rep. Schmidt has no legal bills for the work done for which she requests permission to use campaign funds. Rather, as the FEC is aware by virtue of MUR 6494,² The Turkish Coalition of America (TCA) has already paid Rep. Schmidt's attorneys for

¹ 11 C.F.R. 112.1(b).

² In September 2011 I filed a complaint with the Commission regarding this payment scheme, the Commission's review of this scheme is styled MUR 6494. I have attached a copy of the complaint and the acknowledgement letter as Exhibits 1 and 2 respectively.

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their work on all the legal matters Rep. Schmidt has been involved in since late 2008. As such, Schmidt for Congress requests the FEC's permission to pay a bill that does not exist. Rather, what Rep. Schmidt does have is a PERSONAL obligation to refund what the House Committee on Ethics (Ethics Committee) determined was an "impermissible gift."

In this request, Schmidt for Congress has not set forth a specific transaction or activity. Neither Rep. Schmidt, nor Schmidt for Congress plan to undertake to pay legal fees. They plan to refund an impermissible gift. In short, this request poses nothing more than a hypothetical situation. As such, this request simply does not qualify as an advisory opinion request, and thusly the Commission should therefore refuse to provide an opinion.

B. The Request Does Not Include a Complete Description of All Relevant Facts

"Advisory opinion requests shall include a complete description of all facts relevant to the specific transaction or activity with respect to which the request is made."³

As noted above, Schmidt for Congress has not given a complete description of all facts relevant to the specific transaction or activity. Schmidt for Congress has either intentionally, or inadvertently failed to disclose a myriad of relevant facts.

First, Schmidt for Congress fails to acknowledge the ongoing review into this matter by the Commission itself.⁴ While the Commission is presumably aware of its own reviews, the confidential nature of the MUR process virtually guarantees that those members of the public whose input into this matter is most relevant will not be aware of this underlying fact. As such the public's right to comment is diminished when all relevant facts are not disclosed.

The relevant facts regarding this MUR include not only the existence of the MUR itself, but also, all of the communication from the respondents to MUR 6494 and the Commission regarding this payment scheme. As such, that communication must be included in the public record of this Advisory Opinion Request.

A second fact relevant to this specific activity is whether or not the payment of these legal fees by the Turkish Coalition of America constitutes a campaign contribution. The written

³ 11 C.F.R. 112.1(c) [emphasis added].

⁴ See, Acknowledgment Letter, Exhibit 2. Each of the Respondents was informed of MUR 6494 on approximately September 12, 2011 (the date I received the acknowledgement letter). Therefore, Schmidt for Congress, and its Treasurers, cannot claim that the fact of MUR 6494 was unknown to them at the time this opinion was requested.

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request does not disclose the position of Schmidt for Congress with respect to that question. However, it would seem to follow if Schmidt for Congress takes the position that it would be appropriate for the campaign committee to pay these specific alleged bills, then the party who actually did pay the bills would necessarily have made a campaign contribution when they paid those bills. As such, AO 2011-20 is little more than an admission to the charges levied in MUR 6494.

Third, Schmidt for Congress fails to disclose to the Commission that this payment scheme has been referred to the Internal Revenue Service regarding not only Rep. Schmidt's failure to report the payments by TCA as income to herself, but also the tax implications of TCA's involvement as a 501(c)(3) corporation in this payment scheme.⁵

Fourth, as noted above, Schmidt for Congress misleads the Commission by claiming that it is seeking to pay legal expenses. This is patently false. The legal bills which Rep. Schmidt seeks permission to pay with campaign funds don't exist! TCA already paid them. That is why the Ethics Committee investigated Rep. Schmidt, and why, presumably, this Commission will also investigate the payment scheme.

Fifth, Schmidt for Congress fails to specify the amount of the legal bills she claims to owe. The legal matter for which she claims to have legal bills concluded in October 2010. Because the amount of the services this opinion request seeks permission to pay was specifically segregated from those amounts Rep. Schmidt is allowed to refund through a legal expense fund, it is relevant to have the exact cost of these two amicus.

Beyond merely omitting relevant facts, Schmidt for Congress has misstated the facts in its request. Referring to the use to which Rep. Schmidt seeks to put campaign money as "legal fees" is disingenuous. As noted above, there are no such legal bills. A third party has already paid them.

As part of the Ethics Committee's ruling, Rep. Schmidt was required to refund this impermissible gift. Further, the Ethics Committee allowed some of this gift to be refunded through the use of a Legal Expense Trust. However, The Ethics Committee specifically denied the use of Legal Expense Trust expenditures for that portion of the impermissible gift which was in payment of the attorneys' fees for the amicus briefs – the very subject matter of this advisory opinion request.⁶ In essence, Schmidt for Congress seeks to use campaign contributions to refund this impermissible gift.

⁵ See, Whistleblower forms sent to the Internal Revenue Service regarding this illegal payment scheme. Attached as Exhibits 3 and 4.

⁶ In the Matter of Allegations Relating to Representative Jean Schmidt: Report of the Committee on Ethics, p. 13. Available online at <http://www.gpo.gov/fdsys/pkg/CRPT-112hrpt195/pdf/CRPT-112hrpt195.pdf>

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Because the advisory opinion request does not include a "complete description of all facts relevant to the specific transaction or activity with respect to which the request is made,"⁷ AO 2011-20 does not meet the requirements for an advisory opinion request. As such, the requestor is not entitled to an advisory opinion.

C. This Request Undermines the Ethics Committee Ruling

As noted above, this payment scheme has been investigated by the Ethics Committee. As a result of that investigation, Rep. Schmidt was ordered to make repayment of the TCA gift specific to the amicus briefs at issue in this advisory opinion request "immediately." The Ethics Committee made its ruling public on August 5, 2011. As such, Rep. Schmidt has had over two months to comply with the Ethics Committee's order that she make repayment "immediately."

By virtue of having filed this request, it appears that rather than abide by the Ethics Committee ruling, Rep. Schmidt seeks to undermine the ruling by further delaying her repayment of the impermissible gift.

D. This Request is an Attempt to Circumvent the Current Review of the Payment Scheme

The Commission is currently reviewing the payment scheme that is at the heart of this opinion request. MUR 6494 deals with the payments for the amicus brief filings, as well as all other legal services over an approximately 2 1/2 year period beginning in late 2008 and continuing until August 2011, when the Ethics Committee ordered Rep. Schmidt to cease allowing TCA to pay her legal bills. It appears that Schmidt for Congress seeks to have this Commission recharacterize an illegal, excessive, unreported campaign contribution into a campaign debt for the purpose of circumventing this Commission's investigation into the matter.

If the Commission rules on this request now, it may undermine the Commission's own investigation into this scheme to determine if these impermissible gifts also constitute illegal, excessive, unreported campaign contributions.

For the reasons above, the Commission should refuse to provide an advisory opinion on this matter unless and until all relevant facts are disclosed to the Commission and to the public, and until there is resolution to MUR 6494.

II. Alternative Argument

⁷ 11 C.F.R. 112.1(c) [emphasis added].

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Alternatively, should the Commission rule on this request before receiving clarification of the information provided, additional information, or a conclusion of MUR 6494, the Commission should order Schmidt for Congress to refund all of Rep. Schmidt's legal expenses paid by TCA, and specifically forbid the use of any funds from a Legal Expense Trust for the purpose of making these refunds.

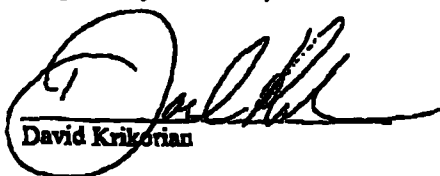
As detailed in the complaint underlying MUR 6494, the payment by TCA of Rep. Schmidt's legal bills constitute campaign contributions. Further, these contributions are illegal (TCA is a 501(c)(3) corporation), excessive (\$500,000 - vastly exceeding contribution limits), and unreported (Schmidt for Congress continues to fail to report these payments in its FEC filings).

Schmidt for Congress, in its Advisory Opinion Request makes it clear that the position of Schmidt for Congress Committee is that the legal expenses Rep. Schmidt incurred beginning in 2008 were campaign related. As such, the TCA's payment of these bills constitutes a campaign contribution. In fact, this Advisory Opinion Request is in essence, an admission to the charges underlying MUR 6494.

The Campaign Committee or Rep. Schmidt personally should be responsible for immediately refunding these illegal contributions. To allow a legal expense trust to refund any of the TCA payments (not just those payments made for the bills at issue in AO 2011-20) would allow double contributions (individuals could contribute \$10,000 in an election cycle between the Legal Expense Trust and the Campaign Committee) and corporate contributions could also be used to pay campaign debts (Legal Expense Trust allow contributions by corporations). As such, the only proper sources for refunding these illegal, excessive, unreported contributions are Rep. Schmidt personally, or Schmidt for Congress Committee.

For these reasons I request that this Commission refuse to rule on the AO 2011-20 at this time, or, in the alternative, order not only that Rep. Schmidt refund the payments it issue in AO 2011-20 with campaign funds, but that Rep. Schmidt refund all of the payments made by TCA on her behalf using only campaign funds or personal funds, not the proceeds of a legal expense trust.

Respectfully submitted,



David Krikorian