

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Jim Feldkamp for Congress and Patricia) MUR 5724
Siegmond, in her official capacity as treasurer;)
James L. Feldkamp;)
Phyllis Feldkamp)

**STATEMENT OF REASONS
COMMISSIONER CYNTHIA L. BAUERLY
COMMISSIONER ELLEN L. WEINTRAUB**

On December 14, 2006, the Commission voted 5-1 to find reason to believe that James Feldkamp violated 2 U.S.C. §§ 441a(f) of the Federal Election Campaign Act of 1971, as amended (“FECA”) by accepting contributions in excess of the specified limits.¹ On October 7, 2008, the Commission failed by a vote of 3-2 to pass a motion to find reason to believe that James L. Feldkamp knowingly and willfully violated 2 U.S.C. § 441a(f) by accepting \$75,000 from his mother, Phyllis Feldkamp, and that Phyllis Feldkamp violated FECA’s contribution limits (2 U.S.C. § 441a(a)(1)(A) and (a)(3)) by making excessive contributions of \$34,780 and \$75,000 to Feldkamp for Congress and James Feldkamp respectively.² We supported this motion because we believe the law was violated and enforcement action was warranted.³

Together, 2 U.S.C. §§ 441a(f) and 441a(a)(1)(A) prohibit any “person” from making a contribution in excess of the limits to a candidate and prohibit a candidate from knowingly accepting an excessive contribution. The excessive contributions at issue here were from a parent (Phyllis Feldkamp) to a child (James L. Feldkamp). Excessive contribution cases involving parents are not novel and neither FECA nor Supreme Court precedent treats a violation of the law by a parent any differently than a violation of the law by a non-relative.

The Supreme Court in *Buckley v. Valeo* (424 U.S. 1 (1976)) specifically considered and rejected the idea that parental contributions are exempt from regulation by Congress:

¹ Commissioners Lenhard, Mason, von Spakovsky, Walther, and Weintraub voted affirmatively for the decision. Commissioner Toner dissented.

² Commissioners Bauerly, Walther and Weintraub supported the motion. Commissioners Hunter and Petersen voted against the motion. Commissioner McGahn recused himself from this matter and did not vote.

³ We believe the Commission has an obligation to explain its decisions publicly and transparently in a timely fashion, preferably at the time the case is made public, but in any event, no later than 60 days after a vote to dismiss since that is the limit of time in which a person aggrieved by the decision has to sue. See 2 USC 437g(a)(8). In this instance, the vote took place over a year ago, but our Statement cannot explain the Commission’s action since we voted for a different result. We waited to issue our Statement so we could respond to the arguments raised in the Statement of the Commissioners whose vote controlled the outcome

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“As the Court of Appeals concluded: ‘Manifestly, the core problem of avoiding undisclosed and undue influence on candidates from outside interest has lesser application when the monies involved come from the candidate himself or from his immediate family.’ n.59: *Although the risk of improper influence is somewhat diminished in the case of large contributions from immediate family members, we cannot say that the danger is sufficiently reduced to bar Congress from subjecting family members to the same limitations as nonfamily contributors.*” 424 U.S. 1, 53 n.59 (emphasis added).

Accordingly, it is our duty to examine each circumstance on a case by case basis and when excessive contributions are found we must uphold the law, regardless of the source of the money.

Here the facts were clear and lead to only one reasonable conclusion. James L. Feldkamp was running for Congress in 2004. In March 2004, his mother, Phyllis Feldkamp loaned the Feldkamp for Congress Committee (“the Committee”) \$34,780. In September 2004, a Request For Additional Information from the Commission put the Committee on notice that the \$34,780 loan was in excess of FECA’s contribution limits.⁴ The Committee refunded the excessive contribution, and thirteen days later Phyllis Feldkamp wrote a check for \$75,000 to her son from the same account as the loan. Within less than a month, the entire \$75,000 had been transferred from James Feldkamp’s personal bank account to the Committee.⁵ The respondents have argued that the gift was part of a pattern of giving that dated back from 1990.⁶ However, the information that the respondents provided established that Phyllis Feldkamp’s pattern of giving was in the form of cash gifts once or twice a year during this period in amounts ranging from \$10,000 to \$15,000 each.⁷ A \$75,000 check, about four weeks before the election in which her son was a candidate, clearly does not fit within this pattern.

In large part, our colleagues’ rationale for not moving forward in this matter appears to be a re-argument about two closed parental contribution cases, MUR 5138 (Ferguson) (2003) and MUR 5321 (Robert) (2004). In the Ferguson matter, the candidate’s family created a trust after the beginning of the election cycle and only the candidate, but none of his other siblings, met the terms of the trust. The Commission voted to find probable cause to believe that the candidate and his committee had violated 2 U.S.C. §§ 441a(f) and 434(b) and that the candidate’s parents

⁴ It was because the FEC, through this RFAI, explicitly told the campaign that excessive contributions from the candidate’s mother are barred that the General Counsel recommended a knowing and willful finding against the candidate and the campaign. Had the matter been allowed to go forward, the campaign would of course have had the opportunity to demonstrate that this finding was not substantiated. The motion that we supported did not include a knowing and willful finding against the candidate’s mother.

⁵ The first transfer from James Feldkamp to the Committee was September 30, 2004, the date he deposited his mother’s check into his account. Subsequent funds were transferred on October 6, 2004 and October 26, 2004.

⁶ See 11 CFR 100.33(b)(6).

⁷ Aside from the \$75,000 check, which was not disclosed to the FEC by the respondents and was not discovered until OGC reviewed the candidate’s bank records during the investigation, it appears that there were only two outliers to Phyllis Feldkamp’s established pattern of giving. The first was a stock transfer of \$182,895 in 1993 and the second was a cash gift of \$24,438.33 in 1996. See Respondents’ Initial Response to Complaint, May 10, 2006.

had violated 2 U.S.C. §§ 441a(a)(1)(A) and (a)(3) and subsequently to approve a conciliation agreement.⁸

In the Robert matter, the Commission split 3-3 on the issue of whether an \$800,000 gift to a candidate from her mother during the campaign fit into the category of "gifts of a personal nature customarily received prior to candidacy." The respondent argued that the gift was the same size and given at the same time as gifts to all nine of the candidate's siblings, and was not for the purpose of influencing a Federal election but part of a longstanding pattern of comparable gift-giving for estate planning purposes. A motion for the Commission to enter into conciliation with the candidate and the mother prior to a finding of probable cause to believe failed to achieve four votes.⁹ In both Robert and Ferguson, Commissioner Weintraub supported going forward because the circumstances surrounding the gifts at issue did not support a determination that they were "of a personal nature customarily received prior to candidacy."

The Commission's failure to go forward in Robert came down to the facts and circumstances surrounding the gift at issue, and proved to be a hard case for some Commissioners. Regardless of the votes in a past case, however, the relevant statutes and regulations remain operative for every new parental contribution case brought before the Commission. Our colleagues argue that "[t]he Commission's contradictory approaches in past matters involving family gifts provide inadequate notice to the regulated community about what is permitted and what is not." We disagree. The Commission's failure to enforce the law in any particular case does not change the law, entitle individuals to ignore the law, or so "hopelessly muddle" the law that it can no longer be enforced. Section 441a(f) explicitly states that "No candidate or political committee shall knowingly accept any contribution . . . in violation of the provisions of this section." Therefore, unless the contributions in question are somehow exempted from this provision, they are prohibited.

Generally in parental contribution cases, the argument is made (as it was here) that the funds in question were gifts from parent to child and are thus "personal funds" of the candidate under the statute. Our regulations specifically address these types of personal funds and allow three specific ways for a candidate to receive this type of income: "income from trusts established before the beginning of the election cycle," or "income from trusts established by bequest," or a gift "of a personal nature that had been customarily received prior to the beginning of the election cycle." 11 C.F.R. § 100.33(b)(4)-(6). Simply put, if the parental contribution does not meet these criteria, the contribution will not be considered personal funds of the candidate

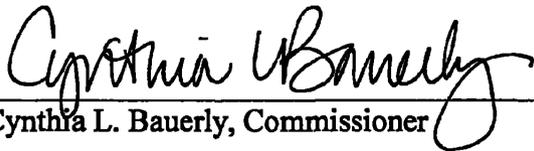
⁸ In explaining their vote in MUR 5138, the two Commissioners who declined to approve the conciliation agreement, Commissioners Toner and Smith, make clear that their objection was to the size of the civil penalty, not to any question of whether there was a violation, stating: "In light of the Court's ruling in *Buckley*, we accept and respect that family member contributions to a federal candidate are subject to FECA's contribution limits." See Statement of Reasons of Commissioners Smith and Toner in MUR 5138 (Ferguson) at 2, dated June 12, 2003.

⁹ In their statements, the three Commissioners who declined to go forward in the Robert matter explained that while they did not dispute that family member contributions are subject to the FECA's contribution limits, it appeared that the \$800,000 gift fit into Robert's established pattern of gift giving and therefore would not have resulted in an excessive contribution. See Statement of Reasons of Chairman Bradley A. Smith and Commissioner Michael E. Toner in MUR 5321 (Robert) dated July 27, 2004; Statement of Reasons of Commissioner Scott E. Thomas in MUR 5321 (Robert) dated July 7, 2004.

and must comply with the FECA limits. In Feldkamp, the respondents established that the customary pattern of gift-giving from Phyllis Feldkamp to her son was cash gifts in the \$10,000 to \$15,000 range "for his birthday or Valentine's Day." The \$75,000 check clearly did not fall within this established pattern, and indeed, none of the respondents ever claimed that it did.¹⁰

Thus, while there may be prior or future instances where a gift from a family member to a candidate meets the criteria laid out in our regulations, the funds in this case do not. There already is a regulation on the books governing this situation; we do not need to issue a new rule or policy statement to justify proceeding here.

Although some may argue that parental contributions should be held to a different standard than the contributions of others, there is no grounding for this position in either our statutes, our regulations, or Supreme Court decisions. We disagree with the result in this matter and supported the recommendation of the Office of General Counsel to find reason to believe the Respondents violated the Act and move to the next stage of the enforcement process.¹¹


Cynthia L. Bauerly, Commissioner

12/15/2009
Date


Ellen L. Weintraub, Commissioner

12/15/09
Date

¹⁰ See Response from Jim Feldkamp and Jim Feldkamp for Congress, dated May 10, 2006; Response from Phyllis Feldkamp, dated October 9, 2007. Neither of the responses mentions the \$75,000 check.

¹¹ At a bare minimum, there is no rationale for not finding reason to believe Phyllis Feldkamp made an excessive contribution in the amount of \$34,780 to Feldkamp for Congress, given that the violation is apparent on the face of reports filed with the FEC. The fact that the loan was repaid six months after it was made does not negate the violation.

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