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**OA/ID Number:** 45279  
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**Folder Title:**  
Emoluments Clause

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THE WHITE HOUSE

WASHINGTON  
February 11, 1991

MEMORANDUM FOR THE FILE

FROM: LEE S. LIBERMAN *LSL*  
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Edward Madigan's Nomination as Secretary of  
Agriculture and the Emoluments Clause

This memorandum memorializes our previous oral advice that Article I, section 6's prohibition on any "Representative ..., during the time for which he was elected, be[ing] appointed to any civil Office under the Authority of the United States, ... the Emoluments whereof shall have been increased during such time" does not bar President Bush from appointing Congressman Edward Madigan Secretary of Agriculture. In our view that clause would present no obstacle to Congressman Madigan's appointment.

Congressman Madigan has served in Congress since 1972, and was sworn in as a Member of the 102d Congress on January 3, 1991. On December 12, 1990, pursuant to various statutory authorities, President Bush signed E.O. 12736, raising the salary for various executive officials, including the Secretary of Agriculture, as of the first day of the first applicable pay period beginning on or after January 1, 1991.

I understand from informal consultation with John McGinnis of the Office of Legal Counsel that for purposes of Article I, section 6, the general view has been that the emoluments of the office were increased on the date the executive order was signed, not the date the new salary became payable. I also understand that it is well established that the phrase "during the time for which he was elected" operates on a term by term basis, so that a Congressman may not be appointed to an office in the same term as the emoluments of that office were raised, but may be appointed if he is reelected in a subsequent term during which there is no new increase in the emoluments of the office.

Applying these general rules, the pay raise increased the emoluments of the office of Secretary of Agriculture on December 12, 1990, during the second session of the 101st Congress.<sup>1</sup> This created no bar to Congressman Madigan's appointment to that office once he began serving a new term, as he did when he was sworn in as a Member of the 102d Congress on January 3, 1991.

cc: Phillip D. Brady

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<sup>1</sup>We are unaware whether the first day of the first applicable pay period was before or after January 3, but in light of the interpretation referenced above, that fact is immaterial.