

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 5278

DATE COMPLAINT FILED: June 24, 2002

DATE OF NOTIFICATION: July 1, 2002

DATE ACTIVATED: September 26, 2002

EXPIRATION OF SOL: July 26, 2006

COMPLAINANT: Mario C. Jauregui

RESPONDENTS: Federal Candidate and Committee

Honorable J Phillip Gingrey

Gingrey for Congress and Robert T. Morgan, as treasurer

State Candidates and Committees

Gingrey for State Senate and Phyllis Gingrey Collins, as treasurer

Honorable Jeff Mullis

Jeff Mullis Victory Account and its treasurer

Honorable Judith H. Manning

Committee to Elect Judy Manning and Margaret H. Barnett, as
treasurer

Russell K. Paul

Rusty Paul for State Senate and its treasurer

RELEVANT STATUTES
AND REGULATIONS:

2 U.S.C. § 431(4)(A)

2 U.S.C. § 434(b)

2 U.S.C. § 441b

2 U.S.C. § 441d

2 U.S.C. § 441f

11 C.F.R. § 102.5

11 C.F.R. § 102.5(b)(1)(ii)

11 C.F.R. § 110.3(d)

11 C.F.R. § 110.4(b)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

1 **I. INTRODUCTION**

2 The complaint in this matter alleged that in 2001 J. Phillip Gingrey ("Gingrey"), Gingrey
3 for Congress and Robert T. Morgan, as treasurer ("Gingrey's federal committee"), Gingrey for
4 State Senate and Phyllis Gingrey Collins,¹ as treasurer, ("Gingrey's state committee"),
5 (collectively "Gingrey respondents"), and the campaign of three Georgia state legislative
6 candidates—Jeff Mullis, Judith H. Manning, and Russell K. Paul, knowingly and willfully
7 violated provisions of the Federal Election Campaign Act of 1971, as amended ("the Act").²
8 Specifically, the complaint alleged that Gingrey unlawfully transferred \$2,500 in excessive and
9 prohibited contributions from Gingrey's state committee through the Manning, Mullis, and Paul
10 state committees to Gingrey's federal committee. The complaint also alleged that Gingrey's
11 state committee unlawfully used non-federal campaign contributions to pay for federal expenses
12 and failed to report such expenses, and that the official website of Gingrey's federal committee
13 did not contain the proper disclaimer and solicitation notices required under the Act.³

14 The Gingrey respondents, Judith H. Manning,⁴ and the Committee to Elect Judy Manning
15 and Margaret H. Barnett, as treasurer ("Manning state committee") responded to the complaint

¹ Formerly known as Phyllis Gingrey Gingrey's state committee still files reports with the Georgia Secretary of State's office

² The Federal Election Campaign Act of 1971, as amended ("the Act") and the regulations in effect during the pertinent time period, which precede the amendments made by the Bipartisan Campaign Reform Act of 2002 ("BCRA"), govern the activity in this matter. All references to the Act and regulations in this Report exclude the changes made by BCRA.

³ The complaint also alleged that the respondents have not submitted documentation to the Commission as required under 11 C.F.R. § 102.5(b)(1)(ii) showing that the non-federal committees had sufficient federally permissible funds in their accounts to contribute legally to Gingrey for Congress. Under 11 C.F.R. § 102.5(b)(1)(ii), a state committee, which is not a political committee under the Act, may make a contribution or expenditure to a federal committee if it can "demonstrate through a reasonable accounting method that it has received sufficient funds subject to the limitations and prohibitions of the Act to make such contribution, expenditure or payment." However, because it appears that the transactions were impermissible transfers, this provision is not relevant.

⁴ Judith H. Manning, a current member of the Georgia State House of Representatives, is related to J. Phillip Gingrey through the marriage of their children. See Manning Committee Response, Manning Affidavit, page 1.

1 through joint counsel. We have not received responses from Jeff Mullis and the Jeff Mullis
2 Victory Account and its treasurer ("Mullis state committee"), or from Russell K. Paul and Rusty
3 Paul for State Senate and its treasurer ("Paul state committee").⁵ The Gingrey and Manning
4 respondents generally argue that the contributions did not involve a *quid pro quo* and that there
5 was no intent to violate the law or hide the contributions. The Gingrey respondents also argue
6 that it is not necessary for the Commission to take further action because Georgia's State Ethics
7 Commission ("Ethics Commission") has already settled this matter with Gingrey through a
8 Consent Order and payment of a \$250 fine and Gingrey's federal committee has refunded the
9 contributions at issue.

10 Based on information obtained from the complaint, respondents, and disclosure reports,
11 we recommend reason to believe findings against Gingrey and Gingrey's state and federal
12 committees for making or knowingly receiving prohibited contributions and impermissible
13 transfers. We also recommend reason to believe findings against Gingrey's federal committee
14 for failing to report the true source of certain contributions, misreporting certain disbursements,
15 failing to report other disbursements and failing to include a complete disclaimer on its official
16 website. We recommend pre-probable cause conciliation with Gingrey and Gingrey's state and
17 federal committees. As a matter of prosecutorial discretion, we recommend the Commission
18 take no action at this time as to any 2 U.S.C. § 441f violations and as to the intermediary state
19 committees and their respective candidates.

20 ⁵ Jeff Mullis is a current member of the Georgia State Senate. The State of Georgia campaign finance reports for the Paul and Mullis state committees do not list a treasurer. The complaint notification letter to Paul was returned to this Office and was re-mailed to Paul's district office address. The Paul state committee no longer files reports with the Georgia Secretary of State's office.

II. FACTUAL AND LEGAL ANALYSIS

A. Gingrey's State Committee made Impermissible Transfers and Prohibited Contributions to Gingrey's Federal Committee

Under the Act and Commission regulations, contributions made and received for the purpose of influencing a federal election are subject to certain limitations and prohibitions.

Corporations and labor organizations may not make contributions "in connection with" a federal election and federal candidates and political committees may not knowingly accept or receive such contributions. 2 U.S.C. § 441b(a). Georgia law permits corporations and labor unions to make contributions to a candidate. *See* O.C.G.A. §§ 21-5-40 and 41. Transfers of funds or assets from a candidate's campaign committee or account for a non-federal election to his or her principal campaign committee or other authorized committee for a federal election are prohibited. 11 C.F.R. § 110.3(d). The Act prohibits contributions in the name of another. 2 U.S.C. § 441f.

FEC and State of Georgia disclosure reports for the 2001-2002 election cycle reflect three contributions from Gingrey's state committee to the Mullis state committee, the Paul state committee and the Manning state committee, and contributions from each of these three recipient committees to Gingrey's federal committee.⁶

⁶ In 2001-2002, J Phillip Gingrey was a member of the Georgia State Senate and a candidate for federal office in Georgia

Donor Committee	Reported Contribution Date	Recipient Committee	Reported Receipt Date	Amount
Gingrey for State Senate	July 26, 2001	Jeff Mullis Victory Account ⁷	July 26, 2001	\$1,000
Jeff Mullis Victory Account	December 27, 2001	Gingrey for Congress	December 27, 2001	\$500
Gingrey for State Senate	December 27, 2001	Rusty Paul for State Senate Committee ⁸	Not reported	\$1,000
Rusty Paul for State Senate Committee	December 21, 2001	Gingrey for Congress	December 31, 2001	\$1,000
Gingrey for State Senate	December 28, 2001	Committee to Elect Judy Manning	December 31, 2001	\$1,000
Committee to Elect Judy Manning	December 28, 2001	Gingrey for Congress	December 31, 2001	\$1,000

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2 On June 14, 2002, Gingrey signed a Consent Order with the Ethics Commission
3 acknowledging that "the series of transfers and reciprocal transfers" shown above violated
4 Georgia law prohibiting the use of contributions received for one elective office to be used for
5 another. See Gingrey Response; O.C.G.A. § 21-5-33(b)(1)(D). The Ethics Commission ordered
6 Gingrey to pay a \$250 fine and to cease and desist from committing any violations of the Ethics
7 in Government Act. *Id.* FEC disclosure reports show that on April 15, 2002, Gingrey's federal
8 committee refunded the \$2,500 in contributions it received from the Manning, Mullis, and Paul
9 committees.

⁷ Gingrey's state committee reported the \$1,000 contribution to "Senator Jeff Mullis" rather than to the Mullis state committee, and the Mullis state committee in turn reported the \$1,000 contribution from Gingrey rather than from Gingrey's state committee. See Complaint, Exhibits A-C. Subsequently the Mullis state committee reported the \$500 contribution to Gingrey while Gingrey's federal committee reported it as a contribution from the "Jeff Mullis Victory Account."

⁸ The Paul state committee did not report the \$1,000 contribution from Gingrey's state committee. See Complaint, Exhibit D. In addition, the Paul state committee's reported contribution date (December 21, 2001) to Gingrey's federal committee predates the reported contribution from Gingrey's state committee (December 27, 2001). Given the December 31, 2001 reported receipt date by Gingrey's federal committee, the December 21, 2001 date is probably an error.

1 Although Gingrey, Manning, and the Manning Committee's treasurer argue the
2 contributions did not result from any agreement or *quid pro quo*,⁹ the language in the Consent
3 Order with the Ethics Commission "[t]hrough the foregoing series of transfers and reciprocal
4 transfers back the Respondent [Gingrey] accomplished what the law prohibits – moving funds
5 collected for one office to a campaign for a different office," and Gingrey's admission that the
6 transfers violated Georgia law, suggest Gingrey intended that the contributions from Gingrey's
7 state committee to the Manning, Mullis, and Paul state committees were to be reciprocated with
8 similar contributions to Gingrey's federal committee. Moreover, the pattern of contributions
9 depicted in the above chart is consistent with Gingrey's admission that the transfers were
10 reciprocal. Finally, the Commission has found that arrangements involving reciprocal transfers
11 are impermissible. In Advisory Opinion 1996-33, the Commission held that a federal
12 candidate's proposal to donate his surplus state committee funds to state candidates, whom he
13 would then solicit for federal contributions in similar amounts, would constitute an
14 impermissible transfer of funds from the candidate's state committee to his federal committee, in
15 violation of 11 C.F.R. § 110.3(d) and also in violation of 2 U.S.C. § 441f if it was a

⁹ Judith H. Manning, the candidate, avers that she did not discuss with Gingrey any scheme to circumvent the law, that Georgia law allows candidates to make and receive contributions, and that the contribution by Gingrey's state committee to her campaign was unrelated to her committee's contribution to Gingrey's federal committee. *See* Manning Affidavit. Specifically, she argues that her contribution was based on a fundraiser she attended several weeks before, in mid-December 2001, and that when she made her contribution she was unaware that her committee had just received a \$1,000 contribution from Gingrey's state committee. *Id.* Manning argues that it was not unusual for Gingrey to have made a contribution given that Gingrey made similar campaign contributions to her in the past and had earlier hosted a fundraiser on her behalf. Manning says that she took Gingrey's contribution as a gesture of support from a close friend. *Id.* at 2.

Margaret H. Barnett, treasurer of the Manning state committee, avers that she wrote checks from the campaign account and confirms that she received a check from Gingrey's state committee on December 28, 2001 and later wrote a check to Gingrey's federal committee for a similar amount. *Id.* She contends that it was her understanding that Manning's contribution to Gingrey was based on Manning's attendance at the fundraiser and Manning's desire to contribute to a relative. *Id.* She further contends that she never discussed with Manning the contribution received from Gingrey's state committee and that she was not a party to any discussion involving Manning and Gingrey making reciprocal contributions. *Id.* Neither Manning nor the Manning Committee treasurer, however, explains why no questions were raised when the treasurer wrote a \$1,000 check to Gingrey's federal committee on the same day that the committee received a check for the same amount from Gingrey's state committee.

1 reimbursement of the state legislators for the funds the same state legislators gave to the
2 candidate's federal committee.

3 In addition to the transfers described above, it appears that Gingrey and his state and
4 federal committees engaged in similar activity with another state committee. Newspaper articles
5 attached to the complaint and the Gingrey Response discussing the proceedings with the Ethics
6 Commission and the refunds to the state committees noted that Gingrey had also refunded a
7 \$1,000 contribution to Charles Barton Ladd. FEC and State of Georgia disclosure reports show
8 that Gingrey's state committee made a \$1,000 contribution to Friends of Bart Ladd on December
9 27, 2001, and that Charles Barton Ladd made a \$1,000 individual contribution to Gingrey's
10 federal committee on December 31, 2001.¹⁰ FEC disclosure reports show that on April 15, 2002,
11 Gingrey's federal committee refunded the \$1,000 contribution to Charles Barton Ladd.

12 Although there is no admission in the Consent Order regarding this transaction and the
13 contribution to Gingrey's federal committee came from Charles Barton Ladd rather than the
14 Ladd committee, as discussed in AO 1996-33, the Commission has found there are
15 circumstances when a state legislator's personal contribution to a federal committee can result in
16 an impermissible transfer. Because the Ladd contribution is similar in timing and amount to the
17 contributions at issue and because Gingrey treated it in the same manner as the other reciprocal
18 contributions i.e., he reimbursed it, we intend to include the transactions involving Friends of
19 Bart Ladd and Charles Barton Ladd as part of the impermissible transfers¹¹

¹⁰ The Ladd Committee, however, reported receiving a \$1,250 contribution instead of a \$1,000 contribution from Gingrey's state committee. The Ladd Committee may have incorrectly reported the amount of the contribution.

¹¹ See Complaint, Exhibit N, Gingrey Response, Appendix B. Because Charles Barton Ladd and the Friends of Bart Ladd were not notified as respondents and we are recommending the Commission take no action at this time regarding the intermediary state committees or candidates, *see infra*, p. 9, we do not recommend any reason to believe findings as to Ladd and the Ladd committee.

1 The information above indicates that Gingrey's state committee impermissibly
2 transferred \$3,500 in non-federal funds to the Manning, Mullis, Ladd, and Paul state committees
3 in return for reciprocal contributions to Gingrey's federal committee. Because Georgia law
4 allows contributions from corporations and labor organizations, such transfers may have
5 included prohibited funds. 2 U.S.C. § 441b(a).

6 The Act explicitly provides that the Commission may find that violations are knowing
7 and willful. 2 U.S.C. § 437g. The knowing and willful standard requires knowledge that one is
8 violating the law. *Federal Election Commission v. John A. Dramei for Congress Comm.*,
9 640 F. Supp. 985 (D.N.J. 1986). The responses and language in the negotiated Consent Order
10 indicate that the parties involved did not believe at the time that they were violating the law.¹²
11 Relying on the respondents' representations in responses, newspaper articles and in the Consent
12 Order that the conduct at issue was not knowing and willful, and in the interest of narrowing the
13 scope of this matter, we do not recommend knowing and willful findings

14 Accordingly, we recommend that the Commission find reason to believe that Gingrey for
15 State Senate and Phyllis Gingrey Collins, as treasurer, violated 2 U.S.C. § 441b by making
16 prohibited contributions to Gingrey for Congress and 11 C.F.R. § 110.3(d) by making
17 impermissible transfers to Gingrey for Congress. We further recommend the Commission find
18 that Gingrey for Congress and Robert T. Morgan, as treasurer, violated 11 C.F.R. § 110.3(d) by
19 accepting impermissible transfers from Gingrey's state committee; 2 U.S.C. § 441b by

¹² The Gingrey respondents, Judith H. Manning and the Manning Committee treasurer, all contend that they never intended to violate the law because all the contributions were fully disclosed in campaign disclosure reports. See Manning and Barnett Affidavits, Gingrey Response. The Gingrey respondents also point to a newspaper article reporting that the Ethics Commission found that "the contributions in question were more the result of laws that need clarification rather than any intentional wrongdoing on behalf of the Gingrey Campaign" and cite to language in the Consent Order that states Gingrey "did not believe at the time these transfers were made that they violated any law, and he fully disclosed the same." See Gingrey Response, page 2.

1 knowingly accepting contributions from prohibited sources;¹³ and 2 U.S.C. § 434(b) by failing to
2 properly report the true source of contributions received from Gingrey's state committee.

3 As discussed above, from the language in the Consent Order that "[t]hrough the
4 foregoing transfers and reciprocal transfers the Respondent [Gingrey] accomplished what the law
5 prohibits – moving funds collected for one office to a campaign for a different office," one can
6 infer that Gingrey was personally involved in the impermissible transfers from his state
7 committee account to his federal committee account. Accordingly, we recommend that the
8 Commission find reason to believe that J. Phillip Gingrey violated 2 U.S.C. § 441b by knowingly
9 accepting contributions from prohibited sources and 11 C.F.R. § 110.3(d) by accepting
10 impermissible transfers.

11 Although the impermissible transfers by the Gingrey respondents and the intermediary
12 state committees and state candidates also implicate 2 U.S.C. § 441f, we believe that a 441f
13 finding in addition to the other findings would, given that the activity was not knowing and
14 willful, likely escalate this matter

15 Thus, as a matter of prosecutorial discretion, we recommend that the Commission
16 take no action at this time against the Gingrey respondents regarding violations of 2 U.S.C.
17 § 441f. Accordingly, because the activity of the intermediary state committees and candidates in
18 this matter only implicates 441f, we recommend that the Commission take no action at this time
19 as to these respondents.

20 ¹³ Given the recommendations based on the making and receiving of prohibited contributions under
2 U.S.C. § 441b, the report does not contain additional recommendations based on the making and receiving of
excessive contributions under 2 U.S.C. §§ 441a(a)(1)(A) and 441a(f)

B. Gingrey's Federal Committee did not Properly Report Certain Expenditures and Failed to Report Other Expenditures

The complaint contends that the Gingrey respondents used state funds to pay for federal expenses, and that they failed to properly report these expenses in violation of the prohibition of transfers from a state campaign committee to a federal committee. *See* Complaint, pages 3-4.

State of Georgia campaign disclosure reports reflect the following disbursements made by Gingrey's state committee to the Chance Public Relations firm ("Chance PR") for political consulting, and to Bell South and Cingular for telephone services:

Payments By State Committee to Chance Public Relations

Payment Date	Payment Source	Amount	Payee	Purpose of Payment
July 15, 2001	Gingrey for State Senate	\$4,000	Chance Public Relations	Political Consulting
July 28, 2001	Gingrey for State Senate	\$1,000	Chance Public Relations	Political Consulting
September 22, 2001	Gingrey for State Senate	\$4,000	Chance Public Relations	Political Consulting
October 28, 2001	Gingrey for State Senate	\$4,000	Chance Public Relations	Political Consulting
	TOTAL.	\$13,000		

Payments By State Committee to Telephone Companies

September 19, 2001	Gingrey for State Senate	\$38 50	Bell South	Campaign Phone Bill
November 6, 2001	Gingrey for State Senate	\$74 88	Bell South	Campaign Phone Bill
December 3, 2001	Gingrey for State Senate	\$253 84	Cingular	Cell Phone Bill
	TOTAL	\$377 22		

In support of its contention, the complaint argues: (1) the disbursements are dated after Gingrey became a federal candidate, i.e., after July 15, 2001, when Gingrey filed a Statement of Candidacy for the U.S. Senate;¹⁴ (2) disbursements to Chance PR from Gingrey's state

¹⁴ On July 15, 2001, Gingrey filed a Statement of Candidacy for the U S Senate. On November 3, 2001, Gingrey notified the Commission that he was withdrawing his Statement of Candidacy for the U S. Senate and was instead running for the U S House of Representatives. Gingrey submitted an amended Statement of Organization that was signed on November 26, 2001. Gingrey also changed his committee's name from "Gingrey for U S. Senate" to "Gingrey for Congress."

1 committee continued through October 2001, but beginning in November 2001, as shown in the
2 chart below, disbursements in the same amounts as had been paid by the state committee were
3 now paid and reported by the federal committee; and, (3) Gingrey's federal committee failed to
4 report any telephone expenses on the 2001 Year-End Report, whereas Gingrey's state committee
5 reported such expenses. *Id.*

Payments By Federal Committee to Chance Public Relations

Date	Committee	Amount	Vendor	Purpose
November 9, 2001	Gingrey for Congress	\$4,000	Chance Public Relations	Political Consulting
December 17, 2001	Gingrey for Congress	\$4,000	Chance Public Relations	Political Consulting
January 7, 2002	Gingrey for Congress	\$4,000	Chance Public Relations	Political Consulting
	TOTAL	\$12,000		

6
7 The Gingrey respondents argue that the disbursements for political consulting and
8 telephone service only pertained to work done by Chance PR for Gingrey's state office. *See*
9 Gingrey Response, pages 3-4. In support of its position, the response refers to an Affidavit
10 signed by Ronnie Chance ("Chance Affidavit"), founder and president of Chance PR. *Id.*
11 Appendix D.

12 According to Chance PR, its consulting contract with Gingrey's state office ran from
13 July 2001 through December 2001, and all of its consulting services to Gingrey were related to
14 his state office. *See* Gingrey Response, pages 3-4, and Appendix D. The Gingrey Response
15 states that though Gingrey filed documents to run for the U.S. Senate in July 2001, during that
16

1 period he was a Georgia State Senator and candidate for reelection to that office.¹⁵ See Gingrey
2 Response, pages 3-4. Chance avers that he and Gingrey had general political discussions about
3 Gingrey's filing for the U.S. Senate and that he advised Gingrey not to run for the U.S. Senate
4 because it was too early in his political career and that he should wait for the result of the
5 redistricting session. See Gingrey Response, Appendix D.

6 The Gingrey Response states that in mid-October 2001, a new congressional seat opened
7 after redistricting and that Gingrey decided to abandon both his Senate bid and his state
8 reelection campaign.¹⁶ See Gingrey Response, pages 3-4 and Appendix D. According to
9 Chance, after Gingrey decided to run for the U.S. House of Representatives, Chance finished up
10 the lobbying and oversight work for Gingrey's state office and, "to avoid any appearance of
11 impropriety," began billing the Gingrey for Congress federal account. *Id.* Chance states that he
12 was generally paid several months after he had performed the work and that checks written to
13 Chance PR after October 2001 were for work performed before that date. *Id.* Chance
14 categorically denies that he did any work in connection with Gingrey's election to the U.S.
15 House of Representatives. *Id.*

¹⁵ Gingrey filed a Statement of Candidacy for the U.S. Senate in July 2001, but it appears Gingrey did not actively pursue that seat. Newspaper reports and disclosure reports reflect that Gingrey was not engaged in any significant campaigning or fundraising activity for federal office until mid-October 2001 when he announced his candidacy for the U.S. House of Representatives. The Gingrey for U.S. Senate committee did not file any disclosure reports, although FEC databases reflect three contributions to the committee totaling \$2,400, and a portion of the contributions reported in Gingrey's House Committee's 2001 Year-End reports appear to be transfers from his Senate Committee. Disclosure reports reflect that a portion of contributions (38 contributions totaling approximately \$32,000) reported by the Gingrey for Congress committee on their 2001 Year-End Report are dated during the period July 2001 through September 2001, during Gingrey's bid for U.S. Senate and before Gingrey filed for candidacy to the U.S. House. These contributions are most likely transfers from the Gingrey for U.S. Senate committee and should have been reported as such by both committees because Gingrey received over \$5,000 in contributions. The amount of receipts, \$32,000, would have been considered relatively minor for a Senate race in Georgia.

¹⁶ According to newspaper articles, Gingrey announced his candidacy for the U.S. House of Representatives sometime in late October 2001 following redistricting and the opening of a new congressional district. See *State Senator Announces Bid for New 11th District Congressional Seat*, AP article dated Tuesday, October 30, 2001.

1 Based on the information provided by the Gingrey respondents, it appears that all of
2 Chance PR's consulting services to Gingrey were related to his state office, and thus Gingrey's
3 state committee's disbursements to Chance PR appear to have been for legitimate state expenses.
4 Accordingly, we recommend that the Commission find no reason to believe that J. Phillip
5 Gingrey, Gingrey for Congress and Robert T. Morgan, as treasurer, and Gingrey for State Senate
6 and Phyllis Gingrey Collins, as treasurer, violated 2 U.S.C. § 441b and 11 C.F.R. § 110.3(d) in
7 connection with the disbursements to Chance Public Relations. It follows, however, that if
8 Chance PR did not perform any services in connection with a federal election, Gingrey's federal
9 committee should not have reported any disbursements to Chance PR, unless they were reported
10 as "other disbursements." Thus, the \$12,000 in disbursements to Chance PR that were reported
11 by Gingrey's federal committee as disbursements for the primary election were improperly
12 reported in violation of 2 U.S.C. § 434(b).

13 The Gingrey respondents did not specifically address why the Gingrey federal
14 committee's 2001 Year-End report did not disclose any disbursements for telephone service.
15 Their only mention of telephone calls is a passing reference that the expenses for telephone calls
16 were related to Chance PR's consulting services and that such expenses "were duly reported as
17 required by law." See Gingrey Response, page 4. It is highly unlikely that Gingrey's federal
18 committee incurred no telephone expenses in 2001. While it is possible that there is a legitimate
19 explanation for this (e.g., disbursements did not reach the \$200 threshold for reporting or
20 Gingrey paid for the telephone calls himself), absent additional information, it appears that
21 Gingrey's federal committee failed to report expenditures for telephone expenses in violation of
22 2 U.S.C. § 434(b).

C. The Gingrey for Congress Website Contained a Proper Solicitation but did not Contain a Complete Disclaimer

All written solicitations for contributions, including solicitations over the Internet, must include, along with the proper disclaimers, a request for contributor information. 11 C.F.R. § 104.7(b)(1); Advisory Opinions 1995-35 and 1995-9. When making solicitations, committees and treasurers must make "best efforts" to obtain and report the name, address, occupation, and employer of each contributor who gives more than \$200 per calendar year. 11 C.F.R. § 104.7(b)(2). To show that the committee has made "best efforts," solicitations must specifically request that information and inform contributors that the committee is required by law to use its best efforts to collect and report it. *Id.* This request must be clear and conspicuous. *Id.*

The complaint alleges that a printout of the online solicitation form for credit card contributions to Gingrey for Congress, dated June 13, 2002, omits "language informing prospective donors of the Act's source and contribution limits or to implement any apparent safeguards to screen impermissible contributions," as required in Advisory Opinions 1999-9 and 1995-9. *See* Complaint, page 6 and Exhibits O and P.

The online solicitation form contains a proper disclaimer "Paid for by Gingrey for Congress," all fields for contributor information required under section 104.7(b)(1)(i), and a statement that "Employer and Occupation are required for all contributors." Although the form does not specifically state that federal law requires the information or that the committee must use its best efforts to collect and report the information, the online form is set up so that a contribution cannot be made unless all required fields are completed. In addition, the "best efforts" regulatory provisions are essentially a "safe harbor" and there has been no allegation that Gingrey's federal committee has failed to submit complete contributor information.

1 Contrary to the complaint's assertions, neither the Act nor the regulations require that
2 such solicitations inform donors of the Act's source and contribution limits or that the committee
3 establish any specific safeguards to screen impermissible contributions. As respondents point
4 out, a committee can screen online credit contributions in the same way that it screens other
5 contributions and there has been no evidence that Gingrey's federal committee accepted
6 improper credit card contributions. Similarly, neither of the two advisory opinions, AOs 1999-9
7 and 1995-9, cited in the complaint state that this information is required. In the advisory
8 opinions, the Commission was providing guidance to the requesting committees on whether their
9 proposed screening procedures for online credit card solicitations would meet the best efforts
10 requirements; the Commission was not mandating the use of any particular procedures.

11 When a campaign uses public political advertising to solicit contributions or to expressly
12 advocate the election or defeat of a clearly identified candidate, the communication must display
13 a disclaimer notice. 2 U.S.C. § 441d(a); 11 C.F.R. § 110.11(a)(1). Such a communication, if
14 paid for and authorized by a candidate, an authorized political committee of a candidate, or its
15 agents, must clearly state that such authorized political committee has paid for the
16 communication. *Id.*

17 A copy of the homepage for the official Gingrey for Congress website, submitted with
18 the complaint and dated June 13, 2002, does not state, "Paid for by Gingrey for Congress." The
19 Gingrey respondents assert that the homepage for the Gingrey for Congress website contains and
20 has always contained the statement, "Paid for by Gingrey for Congress." See Gingrey Response
21 at 4. In support of this assertion, the Gingrey respondents provided a copy of a printout of the
22 homepage of Gingrey for Congress's official website. The printout states, "Paid for by Gingrey
23 for Congress," but bears a later date, July 30, 2002, than the printout submitted with the
24 complaint. *Id.* at Appendix E. Thus, based on the available information, it appears that for a

period of time before July 30, 2002, or at the very least, on June 13, 2002, the Gingrey for Congress website failed to include a complete disclaimer in violation of 2 U.S.C. § 441d.

III. DISCUSSION OF CONCILIATION PROVISIONS AND CIVIL PENALTY

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We recommend that the Commission
approve the attached Factual and Legal Analysis and Conciliation Agreement. Attachments 1-2.

IV. RECOMMENDATIONS

1. Find reason to believe that Gingrey for Congress and Robert T. Morgan, as treasurer, violated 2 U.S.C. §§ 434(b), 441b, 441d, and 11 C.F.R. § 110.3(d).
2. Find reason to believe that J. Phillip Gingrey violated 2 U.S.C. § 441b and 11 C.F.R. § 110.3(d).
3. Find reason to believe that Gingrey for State Senate and Phyllis Gingrey Collins, as treasurer, violated 2 U.S.C. § 441b and 11 C.F.R. § 110.3(d).
4. Find no reason to believe that J. Phillip Gingrey, Gingrey for Congress and Robert T. Morgan, as treasurer, and Gingrey for State Senate and Phyllis Gingrey Collins, as treasurer, violated 2 U.S.C. § 441b and 11 C.F.R. § 110.3(d) in connection with the disbursements to Chance Public Relations.
5. Take no action at this time with respect to J. Phillip Gingrey, Gingrey for Congress and Robert T. Morgan, as treasurer, and Gingrey for State Senate and Phyllis Gingrey Collins, as treasurer, regarding violations of 2 U.S.C. § 441f.
6. Take no action at this time with respect to Honorable Jeff Mullis; Jeff Mullis Victory Account and its treasurer, Honorable Judith H. Manning; Committee to Elect Judy Manning and Margaret H. Barnett, as treasurer; Russell K. Paul; and Rusty Paul for State Senate and its treasurer.
7. Approve the attached Factual and Legal Analysis.
8. Enter into conciliation with J. Phillip Gingrey, Gingrey for Congress and Robert T. Morgan, as treasurer, and Gingrey for State Senate and Phyllis Gingrey Collins, as treasurer, prior to a finding of probable cause to believe.

9. Approve the attached proposed conciliation agreement and appropriate letter.

Lawrence H. Norton
General Counsel

Rhonda J. Vosdingh
Associate General Counsel for Enforcement

9/14/2004

Date

By:

Jonathan A. Bernstein
Assistant General Counsel

Dominique Dillenseger
Dominique Dillenseger
Attorney

Attachments:

1. Factual and Legal Analysis
2. Conciliation Agreement