FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

SEP 2 7 2004

VIA FIRST CLASS MAIL

Charles C. Clay, Esq.
Brown, Clay, Calhoun, Wilson & Rogers, P.C.
49 Atlanta Street
Marietta, GA 30060

RE: MUR 5278
J. Phillip Gingrey;
Gingrey for Congress and
Robert T. Morgan, as treasurer;
Gingrey for State Senate and
Phyllis Gingrey Collins, as treasurer

Dear Mr. Clay:

The Federal Election Commission previously notified your clients of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, information provided by your clients, and information available to the public, the Commission, on September 23, 2004, found that there is 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), and that J. Phillip Gingrey, Gingrey for State Senate and Phyllis Gingrey Collins, as treasurer, violated 2 U.S.C. § 441b and 11 C.F.R. § 110.3(d), provisions of the Act. In addition, the Commission found that there is 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. Also, the Commission decided to 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. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved. If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you have any questions, please contact Dominique Dillenseger, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Bradley A. Smith
Chairman

Enclosures
Factual and Legal Analysis
Conciliation Agreement

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: J. Phillip Gingrey
Gingrey for Congress and
Robert T. Morgan, as treasurer
Gingrey for State Senate and
Phyllis Gingrey Collins, as treasurer

MUR: 5278

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by Mario C. Jauregui. *See* 2 U.S.C. § 437g(a)(1). The complaint alleged that in 2001 J. Phillip Gingrey ("Gingrey"), Gingrey for Congress and Robert T. Morgan, as treasurer ("Gingrey's federal committee"), Gingrey for State Senate and Phyllis Gingrey Collins,[1] as treasurer, ("Gingrey's state committee"), (collectively "Gingrey respondents"), knowingly and willfully violated provisions of the Federal Election Campaign Act of 1971, as amended ("the Act").[2] Specifically, the complaint alleged that Gingrey unlawfully transferred $2,500 in excessive and prohibited contributions from Gingrey's state committee through several state committees to Gingrey's federal committee. The complaint also alleged that Gingrey's state committee unlawfully used non-federal campaign contributions to pay for federal expenses and failed to report such expenses, and that the official

[1] Formerly known as Phyllis Gingrey

[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

website of Gingrey's federal committee did not contain the proper disclaimer and solicitation notices required under the Act.[3]

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 state candidate committee. O.C.G.A. §§ 21-5-40 and 41.

Transfers of funds or assets from a candidate's campaign committee or account for a nonfederal 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). In Advisory Opinion 1996-33, the Commission held that a federal candidate's proposal to donate his surplus state committee funds to state candidates, whom he would then solicit for federal contributions in similar amounts, would, *inter alia*, constitute an impermissible transfer of funds from the candidate's state committee to his federal committee, in violation of 11 C.F.R. § 110.3(d).

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[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.

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.[4]

Donor Committee	Reported Contribution Date	Recipient Committee	Reported Receipt Date	Amount
Gingrey for State Senate	July 26, 2001	Jeff Mullis Victory Account[5]	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[6]	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

On June 14, 2002, Gingrey signed a Consent Order with the Ethics Commission acknowledging that "the series of transfers and reciprocal transfers" shown above violated Georgia law prohibiting the use of contributions received for one elective office to be used for another. O.C.G.A. § 21-5-33(b)(1)(D). The Ethics Commission ordered Gingrey to pay a $250 fine and to

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

[5] 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 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."

[6] The Paul state committee did not report the $1,000 contribution from Gingrey's state committee. 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.

cease and desist from committing any violations of the Ethics in Government Act. In addition, on April 15, 2002, Gingrey's federal committee refunded the $2,500 in contributions to the Manning, Mullis, and Paul committees.

Although the Gingrey respondents argue the contributions did not result from any agreement or *quid pro quo,* the language in the Consent Order with the Ethics Commission "[t]hrough the foregoing series of transfers and reciprocal transfers back the Respondent [Gingrey] accomplished what the law prohibits – moving funds collected for one office to a campaign for a different office," and Gingrey's admission that the transfers violated Georgia law, suggest Gingrey intended that the contributions from Gingrey's state committee to the Manning, Mullis, and Paul state committees were to be reciprocated with similar contributions to Gingrey's federal committee. Moreover, the pattern of contributions depicted in the above chart is consistent with Gingrey's admission that the transfers were reciprocal. Finally, the Commission has found that arrangements involving reciprocal transfers are impermissible. *See* Advisory Opinion 1996-33.

In addition to the transfers described above, it appears that Gingrey and his state and federal committees engaged in similar activity with another state committee. FEC and State of Georgia disclosure reports show that Gingrey's state committee made a $1,000 contribution to Friends of Bart Ladd on December 27, 2001, and that Charles Barton Ladd made a $1,000 individual contribution to Gingrey's federal committee on December 31, 2001.[7] FEC disclosure reports show that on April 15, 2002, Gingrey's federal committee refunded the $1,000 contribution to Charles Barton Ladd.

[7] 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

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

The Act explicitly provides that the Commission may find that violations are knowing and willful. 2 U.S.C. § 437g. The knowing and willful standard requires knowledge that one is violating the law. *Federal Election Commission v. John A. Dramesi for Congress Comm.*, 640 F. Supp. 985 (D.N.J. 1986). The responses and language in the negotiated Consent Order indicate that the Gingrey respondents did not believe at the time that they were violating the law.[8]

The information above indicates that Gingrey's state committee impermissibly transferred $3,500 in non-federal funds to the Manning, Mullis, Ladd, and Paul state committees in return for reciprocal contributions to Gingrey's federal committee. Because Georgia law allows contributions from corporations and labor organizations, such transfers may have included prohibited funds.

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[8] The Gingrey respondents contend that they never intended to violate the law because all the contributions were fully disclosed in campaign disclosure reports They 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."

Therefore, there is reason to believe that Gingrey for State Senate and Phyllis Gingrey Collins, as treasurer, violated 11 C.F.R. § 110.3(d) by making impermissible transfers to Gingrey for Congress and 2 U.S.C. § 441b by making prohibited contributions to Gingrey for Congress. In addition, there is reason to believe that Gingrey for Congress and Robert T. Morgan, as treasurer, violated 11 C.F.R. § 110.3(d) by accepting impermissible transfers from Gingrey for State Senate and 2 U.S.C. § 441b by knowingly accepting contributions from prohibited sources.

From the language in the Consent Order that "[t]hrough the foregoing transfers and reciprocal transfers the Respondent [Gingrey] accomplished what the law prohibits – moving funds collected for one office to a campaign for a different office," one can infer that Gingrey was personally involved in the impermissible transfers from his state committee account to his federal committee account. Therefore, there is reason to believe that J. Phillip Gingrey violated 11 C.F.R. § 110.3(d) by accepting impermissible transfers from Gingrey for State Senate and 2 U.S.C. § 441b by knowingly accepting contributions from prohibited sources.

Each report filed by a political committee shall disclose the identification of each political committee that makes a contribution to the reporting committee. 2 U.S.C. § 434(b). Gingrey for Congress did not properly report the true source of the $3,500 in contributions received from Gingrey for State Senate. Therefore, there is reason to believe that Gingrey for Congress and Robert T. Morgan, as treasurer, violated 2 U.S.C. § 434(b).

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

On July 15, 2001, Gingrey filed a Statement of Candidacy for the U.S. Senate. On November 3, 2001, Gingrey withdrew his candidacy for the Senate and ran for the U.S. House of

Representatives. The Gingrey respondents state that though Gingrey filed documents to run for Congress, during that period he was also a Georgia State Senator and candidate for reelection to that office.

Campaign disclosure reports reflect the following disbursements to the Chance Public Relations firm ("Chance PR") for political consulting, and to Bell South and Cingular for telephone services:

Payments By Gingrey's State and Federal Committees 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
November 9, 2001	Gingrey for Congress	$4,000	Chance Public Relation	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
Payments By Gingrey's 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		

The Gingrey respondents argue that the disbursements shown above for political consulting and telephone service only pertained to work done by Chance PR for Gingrey's state office and that they did not use nonfederal funds to pay for federal expenses.

According to Ronnie Chance, founder and president of Chance PR, its consulting contract with Gingrey's state office ran from July 2001 through December 2001, and all of its consulting services to Gingrey were related to his state office. Chance states that after Gingrey decided to run for the U.S. House of Representatives, he finished up the lobbying and oversight work for Gingrey's state office and, "to avoid any appearance of impropriety," began billing the Gingrey for Congress federal account. Chance denies that he did any work in connection with Gingrey's election to the U.S. House of Representatives.

Based on the information provided by the Gingrey respondents, it appears that all of Chance PR's consulting services to Gingrey were related to his state office, and thus Gingrey's state committee's disbursements to Chance PR appear to have been for legitimate state expenses. It follows, however, that if Chance PR did not perform any services in connection with a federal election, Gingrey's federal committee should not have reported any disbursements to Chance PR, unless they were reported as "other disbursements." Thus, the $12,000 in disbursements to Chance PR that were reported by Gingrey's federal committee as disbursements for the primary election were improperly reported in violation of 2 U.S.C. § 434(b).

The Gingrey respondents explained that the expenses for telephone calls were related to Chance PR's consulting services and that such expenses "were duly reported as required by law." However, they do not explain why the Gingrey federal committee's 2001 Year-End report does not disclose any disbursements for telephone service for the federal election in 2001. Thus, absent additional information, it appears that Gingrey's federal committee failed to report expenditures for telephone expenses in violation of 2 U.S.C. § 434(b).

Therefore, there is reason to believe that Gingrey for Congress and Robert T. Morgan, as treasurer, violated 2 U.S.C. § 434(b) by misreporting $12,000 in disbursements for state expenses as disbursements for federal expenses, and failing to report telephone expenses made in connection with the federal election in 2001.

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 alleged 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. The complaint also alleged that the Gingrey for Congress website does not include a complete disclaimer.

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.

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

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

A copy of the homepage for the official Gingrey for Congress website, submitted with the complaint and dated June 13, 2002, does not state, "Paid for by Gingrey for Congress." The Gingrey respondents assert that the homepage for the Gingrey for Congress website contains and has always contained the statement, "Paid for by Gingrey for Congress." In support of this assertion, the Gingrey respondents provided a copy of a printout of the homepage of Gingrey for Congress's official website. The printout states, "Paid for by Gingrey for Congress," but bears a later date, July 30, 2002, than the printout submitted with the complaint. 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. Therefore, there is reason to believe that Gingrey for Congress and Robert T. Morgan, as treasurer, violated 2 U.S.C. § 441d.