



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

DEC 2 2004

**VIA FIRST CLASS MAIL**

Charles C. Clay, Esq.  
Brock, Clay, Calhoun & Wilson, 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:

On November 18, 2004, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on your clients' behalf in settlement of violations of 2 U.S.C. §§ 434(b), 441b, and 441d, and 11 C.F.R. § 110.3(d). The Commission also voted to take no action with respect to your clients regarding violations of 2 U.S.C. § 441f. Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. *See* 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please be aware that the agreement requires that Gingrey for Congress amend its disclosure reports within 30 days of the date of the agreement.

Charles C. Clay, Esq.  
MUR 5278  
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If you have any questions, please contact me at (202) 694-1650.

Sincerely,

*Dominique Dillenseger*

Dominique Dillenseger  
Attorney

Enclosure  
Conciliation Agreement

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**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
 ) MUR 5278  
 )  
J. Phillip Gingrey )  
Gingrey for Congress and )  
Robert T. Morgan, as treasurer )  
Gingrey for State Senate and )  
Phyllis Gingrey Collins, as treasurer )

**CONCILIATION AGREEMENT**

This matter was initiated by a signed, sworn, and notarized complaint by Mario C. Jauregui. The Federal Election Commission ("Commission") found reason to believe that J. Phillip Gingrey violated 2 U.S.C. § 441b and 11 C.F.R. § 110.3(d), 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 Gingrey for State Senate and Phyllis Gingrey Collins, as treasurer, violated 2 U.S.C. § 441b and 11 C.F.R. § 110.3(d).

NOW, THEREFORE, the Commission and the Respondents having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows.

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

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FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
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IV. The pertinent facts in this matter are as follows:<sup>1</sup>

1. Gingrey for State Senate is a state committee within the meaning of Georgia law.
2. Phyllis Gingrey Collins is the treasurer of Gingrey for State Senate.
3. Gingrey for Congress is a political committee within the meaning of 2 U.S.C. § 431(4).
4. Robert T. Morgan is the treasurer of Gingrey for Congress.
5. In 2001-2002, J. Phillip Gingrey was a member of the Georgia State Senate and a candidate for federal office in Georgia.
6. A contribution includes a gift, loan, advance, deposit of money, or anything of value. 2 U.S.C. § 431(8)(A)(i).
7. 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). In 2001, the State of Georgia allowed corporations and labor organizations to contribute to a state candidate committee. Thus, an influx of funds from a candidate's campaign committee for a nonfederal election in Georgia to his principal campaign committee would violate 2 U.S.C. § 441b(a).
8. 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 AO 1996-33, the

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<sup>1</sup> All of the facts recounted in this agreement occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub L 107-155, 116 Stat 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Federal Election Campaign Act of 1971, as amended (the "Act"), herein are to the Act as it read prior to the effective date of BCRA and all citations to the Commission's regulations herein are to the 2002 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA.

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).

9. Gingrey for State Senate made the following indirect transfers to Gingrey for Congress:

Donor	Reported Contribution Date	Recipient	Reported Receipt Date	Amount
Gingrey for State Senate	July 26, 2001	Jeff Mullis Victory Account	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	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
Gingrey for State Senate	December 27, 2001	Friends of Bart Ladd	December 27, 2001	\$1,000
Charles Barton Ladd	December 31, 2001	Gingrey for Congress	December 31, 2001	\$1,000

10. On June 14, 2002, Gingrey signed a Consent Order with Georgia's Ethics Commission acknowledging that "the series of transfers and reciprocal transfers" to Jeff Mullis Victory Account, Rusty Paul for State Senate Committee, and Committee to Elect Judy Manning violated Georgia law prohibiting the use of contributions received for one elective office to be used for another. The Ethics Commission ordered Gingrey to pay a \$250 fine and to cease and desist from committing any violations of the Ethics in Government Act. On April 15, 2002, Gingrey for Congress refunded \$2,500 in contributions to the Manning, Mullis, and Paul committees and \$1,000 to Charles Barton Ladd.

11. Gingrey for State Senate made \$3,500 in prohibited contributions and impermissible transfers to Gingrey for Congress.

12. 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.

13. Each report filed by a political committee shall disclose the information specified in 2 U.S.C. § 434(b). Gingrey for Congress's 2001 Year-End report did not disclose any disbursements for telephone service. It appears that Gingrey for Congress failed to report expenditures for telephone expenses during that period.

14. Each report filed by a political committee shall disclose the information specified in 2 U.S.C. § 434(b). Gingrey acknowledged that Chance Public Relations did not perform any services for Gingrey in connection with a federal election. Gingrey for Congress, however, improperly reported \$12,000 in disbursements to Chance Public Relations as disbursements for the primary federal election.

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		

15. 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.*

16. The homepage for the official Gingrey for Congress website, dated June 13, 2002, failed to state, "Paid for by Gingrey for Congress." Thus, the Gingrey for Congress website failed to include a complete disclaimer.

V. The following violations of the Act occurred:

1. Gingrey for State Senate and Phyllis Gingrey Collins, as treasurer, violated 2 U.S.C. § 441b by making prohibited contributions to Gingrey for Congress and 11 C.F.R. § 110.3(d) by making impermissible transfers to Gingrey for Congress. Gingrey for State Senate and Phyllis Gingrey Collins, as treasurer, will cease and desist from violating 2 U.S.C. § 441b and 11 C.F.R. § 110.3(d)

2. Gingrey for Congress and Robert T. Morgan, as treasurer, violated 2 U.S.C. § 441b by accepting contributions from prohibited sources and 11 C.F.R. § 110.3(d) by accepting impermissible transfers from Gingrey for State Senate. Gingrey for Congress and Robert T. Morgan, as treasurer, will cease and desist from violating 2 U.S.C. § 441b and 11 C.F.R. § 110.3(d).

3. J. Phillip Gingrey violated 2 U.S.C. § 441b by accepting contributions from prohibited sources and 11 C.F.R. § 110.3(d) by accepting impermissible transfers from Gingrey for State Senate. J. Phillip Gingrey will cease and desist from violating 2 U.S.C. § 441b and 11 C.F.R. § 110.3(d).

4. Gingrey for Congress and Robert T. Morgan, as treasurer, violated 2 U.S.C. § 434(b) by: failing to properly report the true source of the \$3,500 in contributions received from Gingrey for State Senate; failing to report telephone expenses made in connection with the federal election in 2001; and misreporting \$12,000 in disbursements for state expenses as

disbursements for federal expenses Gingrey for Congress and Robert T. Morgan, as treasurer, will cease and desist from violating 2 U.S.C. § 434(b)

5 Gingrey for Congress and Robert T. Morgan, as treasurer, violated 2 U.S.C. § 441d by failing to include a complete disclaimer on its official website. Gingrey for Congress and Robert T. Morgan, as treasurer, will cease and desist from violating 2 U.S.C. § 441d.

6. The Commission has made no findings that these violations were knowing and willful

VI Gingrey for Congress will pay a civil penalty to the Federal Election Commission in the amount of One Thousand Eight Hundred Dollars (\$1,800) pursuant to 2 U.S.C. § 437g(a)(5)(A)

VII. Gingrey for Congress and Robert T. Morgan, as treasurer, will amend their reports accordingly.

VIII The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

IX. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

X. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission



XI. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable

FOR THE COMMISSION.

Lawrence H Norton  
General Counsel

BY: 12/1/04  
Rhonda J. Vosdingh  
Associate General Counsel  
for Enforcement

Rhonda J. Vosdingh  
Date

FOR THE RESPONDENTS

Charles C. Clay  
(Name) Charles C. Clay  
(Position) Attorney for Respondents  
Ga. St. Bar # 129450  
49 Atlanta St.  
Marietta, Ga. 30060

10-29-04  
Date