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

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR: 6253
DATE COMPLAINT FILED: 02/22/2010
DATE SUPPLEMENTS FILED: 03/04/2010;
04/16/2010
DATES OF NOTIFICATION: 02/25/2010;
03/08/2010; 04/22/2010
LAST RESPONSE RECEIVED: 04/14/2010
DATE ACTIVATED: 04/27/2010
EXPIRATION OF SOL: 04/01/2014 –
07/15/2014

COMPLAINANT:

Jeffrey J. Parker

RESPONDENTS:

Harold W. ("Trey") Gowdy III
Trey Gowdy for Congress and Marvin
Quattlebaum, in his official capacity as treasurer
Gowdy State Solicitor Committee
Under the Power Lines

RELEVANT STATUTES:

2 U.S.C. § 434(b)
2 U.S.C. § 441a
2 U.S.C. § 441b
2 U.S.C. § 441i(e)
11 C.F.R. § 110.3(d)

INTERNAL REPORTS CHECKED:

Disclosure Reports

OTHER AGENCIES CHECKED:

None

I. INTRODUCTION

The complaint in this matter alleges that Harold W. ("Trey") Gowdy III and Trey Gowdy for Congress and Marvin Quattlebaum, in his official capacity as treasurer (the "Committee"), Mr. Gowdy's authorized committee for his Congressional race in South Carolina's fourth Congressional District, violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by using funds from his state committee, Gowdy State Solicitor Committee ("State Committee") and by not disclosing all relevant expenditures.

1 Mr. Gowdy has continuously served, and is still serving, as South Carolina's 7th Circuit
2 Solicitor since his election to that position in 2000, and has maintained his State Committee. On
3 June 1, 2009, Mr. Gowdy filed his statement of candidacy for federal office. On July 13, 2009,
4 the Committee filed its first disclosure report, the July 2009 Quarterly Report, covering the period
5 from April 1, 2009, through June 30, 2009. That Report disclosed receipts of \$87,924 and
6 expenditures of \$4,924.52. The State Committee filed its disclosure report for the same period
7 with the South Carolina State Ethics Commission on July 1, 2009, disclosing no receipts and
8 expenditures of \$6,793.79.

9 In support of his allegation that Mr. Gowdy and the Committee have impermissibly used
10 funds from the State Committee, the Complainant points out that the State Committee disclosed an
11 expenditure of \$6,000 on April 9, 2009, to a firm known as Under the Power Lines ("UTPL") for
12 website design and development for a State Committee website that was never publicly activated,
13 whereas the Committee disclosed a payment to the same firm of only \$3,806 on June 29, 2009, for
14 its website development. In an addendum to the complaint, filed on March 4, 2010, Complainant
15 compares the "website development" charges that the Gowdy Committee paid UTPL with UTPL's
16 far more substantial "website design" charges in 2008 to another client, Barrett for Congress.
17 Because this allegation suggested that the vendor, UTPL, a limited liability company, might have
18 violated the Act by under-billing the Committee, and therefore making an excessive or corporate
19 contribution to it, UTPL was notified of the complaint.¹

¹ In general, multi-member limited liability companies may elect to be treated either as partnerships or as corporations for federal tax purposes, regardless of their status under state law. See Explanation and Justification for 11 C.F.R. § 110.1(g): Treatment of Limited Liability Companies Under the Federal Election Campaign Act, 64 Fed. Reg. 37397, 37399 (July 12, 1999). A contribution by an LLC that elects to be treated as a partnership by the Internal Revenue Service ("IRS") shall be considered a contribution from a partnership, which shall be attributed to the partnership and each partner. See 11 C.F.R. §§ 110.1(e) and (g)(2). An LLC that elects to be treated as a corporation by the IRS shall be considered a contribution from a corporation to 11 C.F.R. § 110.1(e). See 11 C.F.R. § 110.1(g)(3). We have no information as to which type of tax treatment UTPL elected for its organization.

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1 In their joint response, Respondents include affidavits refuting the allegations that UTPL
2 under-billed the Committee or that funds expended by the State Committee for its website were
3 used to develop the Committee's website. We believe that Respondents' numerous and specific
4 affidavits should be credited. Accordingly, we recommend that the Commission find no reason to
5 believe that Trey Gowdy, the Committee, and the State Committee violated 2 U.S.C.

6 § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d), and no reason to believe the Gowdy Committee violated
7 2 U.S.C. §§ 441a(f) or 441b in connection with its website expenditures. We also recommend that
8 the Commission find no reason to believe that UTPL violated 2 U.S.C. §§ 441a(a) or 441b.

9 The complaint also alleges that the Committee used State Committee funds to pay for its
10 office expenses relating to postage and telephone fees. As support for this contention, the
11 complaint notes that the Committee did not disclose any office expenses in its 2009 July Quarterly
12 Report, while the State Committee's disclosure reports for the same time period show
13 reimbursement payments to Spartanburg County for "office related expenses and supplies" in the
14 amounts of \$188.62 on May 20, 2009, and \$166.37 on June 19, 2009, respectively, and additional
15 reimbursements for office expenses, supplies and phone bills, on July 9, 2009 (\$219), August 21,
16 2009 (\$224), September 22, 2009 (\$199.11), October 19, 2009 (\$198.38) and November 20, 2009
17 (\$186.50). See Complaint at 2 and Attachment 3. In response, Mr. Gowdy's affidavit describes
18 the circumstances surrounding the State Committee's reimbursements to Spartanburg County for
19 office expenses, including the usage fees on his personal cellphone. The affidavit acknowledges
20 that Mr. Gowdy used his cellphone, in part, for "initiating and receiving some Gowdy for
21 Congress calls," Gowdy Affidavit at paragraph 7, and it therefore appears that the State
22 Committee expended funds in connection with Mr. Gowdy's federal campaign cellphone usage
23 fees. However, because such spending was likely *de minimis*, we recommend that the

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Commission exercise its prosecutorial discretion and dismiss the allegation that the State Committee violated 2 U.S.C. §441i(e)(A) and 11 C.F.R. § 110.3(d) by paying for the Committee's cellular phone usage. As to postage expenditures, we recommend the Commission find no reason to believe that Trey Gowdy, the Committee, and the State Committee violated 2 U.S.C. §441i(e)(A) and 11 C.F.R. § 110.3(d) as the Committee's disclosure reports show it spent its own funds for postage expenses, and the complaint provides no specific information to the contrary.

With respect to the allegation that the Committee did not disclose all of its expenditures for the federal campaign, the Committee's response denies generally that the State Committee paid any of the Committee's expenses, but does not specifically address the absence of any payments for telephone costs in its disclosure reports at the time of its response, or affirm specifically that it reported all of its expenditures. For example, the Committee did not report spending for phone usage until late May 2010. While there may be reasonable explanations for the absence of telephone-related expenses on the Committee's reports until late May 2010, on the basis of the available information, we cannot fully evaluate whether the Committee has reported all of its expenditures. However, based on indications that the possible undisclosed expenditures may have been relatively low, we are recommending that the Commission exercise its prosecutorial discretion and dismiss the allegations that Gowdy for Congress, and Marvin Quattlebaum, in his official capacity as treasurer, violated 2 U.S.C. § 434(b), and close the file.

II. FACTUAL AND LEGAL ANALYSIS

A. Allegation that the Committee Spent State Committee Funds

Federal candidates and officeholders, or entities directly or indirectly established, financed, maintained or controlled by them, are prohibited from soliciting, receiving, directing, transferring, or spending nonfederal funds, unless the funds are subject to the limitations, prohibitions, and reporting requirements of the Act. *See* 2 U.S.C. § 441i(e)(1)(A). Further, Commission's

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1 regulations provide, in material part, that transfers of funds or assets from a candidate's non-
2 federal campaign committee to his or her principal campaign committee for a federal election are
3 prohibited. *See* 11 C.F.R. § 110.3(d). South Carolina state law permits contributions to state
4 committees in excess of the federal limits and contributions from corporations, and none of the
5 state campaign funds at issue were subject to the Act's reporting provisions as required by Section
6 441i(e)(1)(A). *See* S.C. Code Ann. 8-13-1314. Thus, if State Committee funds were used to pay
7 federal campaign expenses, Mr. Gowdy and the Committee would have received prohibited in-
8 kind contributions from the State Committee, in violation of 2 U.S.C. § 441i(e)(1)(A) and
9 11 C.F.R. § 110.3(d). *See* MUR 5426 (Dale Schultz for Congress) (Schultz Federal committee
10 effectively received prohibited transfer of funds when the Schultz State Committee paid for
11 expenses that the candidate incurred in connection with his federal election).

12 The Act limits the contributions a person can make, and a candidate can receive, with
13 respect to a federal election. 2 U.S.C. § 441a. These contributions cannot, in aggregate, exceed
14 \$2,400 per election. *See* 2 U.S.C. § 441a(a)(1)(A). The Act also prohibits corporate contributions,
15 including in-kind contributions, to a federal candidate and his or her authorized political
16 committee, and candidates and their authorized committees are prohibited from knowingly
17 accepting such contributions. 2 U.S.C. § 441b(a).

18 In response to the complaint, Mr. Gowdy provided a sworn affidavit that states "[a]t no
19 time have Gowdy for Solicitor campaign funds been used in connection with my congressional
20 campaign, Gowdy for Congress." Gowdy Affidavit, paragraph 2. Both Mr. Gowdy and Wesley
21 Donehue of UTPL declare in their affidavits that the Gowdy State Committee payments for
22 website services are unrelated to Gowdy's congressional campaign.² Mr. Gowdy denies that any

² According to his page on LinkedIn, *see* <http://www.linkedin.com/in/wesleydonehue>, Mr. Donehue was one of the owners of UTPL from 2007 to January 2010.

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1 of the April 2009 website payments disclosed by the State Committee relate to his federal
2 campaign, and that the website expenses paid by the State Committee related to "blogs written,
3 photographs used, videos recorded, and text [that] were solely and exclusively related to my work
4 as a prosecutor." *See* Gowdy Affidavit, paragraph 4. Wesley Donehue of UTPL also attests that
5 the April 2009 website fees were exclusively focused on Mr. Gowdy's responsibilities as Solicitor
6 and Chairman of the South Carolina Prosecution Commission. Donehue Affidavit, paragraph 3.
7 He also states that Mr. Gowdy did not approach him concerning the project for a federal campaign
8 website until May 2009, and that the State Committee's payments to UTPL in April 2009 were for
9 work not connected with the Committee's website. *Id.* at paragraph 4.

10 In addition to the affidavits from Messrs. Gowdy and Donehue denying the allegations,
11 Respondents also provided sworn statements from individuals who were involved in the State
12 Committee-proposed website. A. Murray Glenn, a public information officer for the 7th Circuit
13 Solicitor's office, states in his affidavit that in February or March 2009, he participated in the
14 filming of a video segment for a website that Mr. Gowdy "was having built," which focused only
15 on reforming the state criminal justice system, and maintains that there was no mention of
16 Congress or any discussion of a run for that office. Glenn Affidavit, paragraph 5. Eric Williams,
17 who owns a media company, states in his affidavit that he filmed a "short web video introduction"
18 after being approached by Mr. Gowdy in February or March of 2009, and confirms that the
19 content of the video centered on reforming the state criminal justice system. *See* Williams
20 Affidavit, paragraphs 3-4. He also states that "[a]t no point in time was Congress mentioned
21 either on film, before filming or after filming." *Id.*, paragraphs 5.³

³ According to its disclosure reports, it appears that the State Committee had laid the groundwork for designing a nonfederal website months before the videos were filmed in February or March 2009, as it paid Misk, a web hosting domain registration company, \$60 to obtain domain names for Gowdy for Solicitor in December 2008.

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1 We believe that the affidavits provided with the joint Response sufficiently refute the
2 allegations that State Committee funds were used for the Committee's website or that UTPL
3 under-billed the Committee for work performed for its website. In addition, the fact that no State
4 Committee website has been activated does not mean that there were never efforts to create one,
5 but may have reflected Mr. Gowdy's decision in May 2009 to run for federal office in 2010. The
6 fact that the Gowdy Committee may have spent less in initial website design and development fees
7 than another UTPL client is not probative, standing alone, since business arrangements among
8 clients can differ based on a variety of factors. Moreover, since the Committee's initial \$3,806
9 payment to UTPL, its disclosure reports show that it has paid UTPL and its parent company
10 amounts that collectively total in excess of \$50,000 for a variety of services—more than the
11 amounts Complainant alleges that Barrett for Congress paid UTPL in 2008—that include strategic
12 consulting, commercial editing, website development, web advertising, and “voter fetch” services,
13 an online phone banking program for campaigns that allows volunteers to make calls. In light of
14 the foregoing, we recommend that the Commission find no reason to believe that Harold W.
15 (“Trey”) Gowdy III, Trey Gowdy for Congress, and Marvin Quattlebaum, in his official capacity
16 as treasurer, and Gowdy State Solicitor Committee violated 2 U.S.C. § 441i(e)(1)(A) and
17 11 C.F.R. § 110.3(d), or that Trey Gowdy for Congress, and Marvin Quattlebaum, in his official
18 capacity as treasurer, violated 2 U.S.C. §§ 441a(f) or 441b with respect to its website
19 expenditures. We also recommend that the Commission find no reason to believe that Under the
20 Power Lines violated 2 U.S.C. §§ 441a(a) or 441b.

21 With respect to the cellular phone charges for which the State Committee reimbursed
22 Spartanburg County, Mr. Gowdy states in his affidavit that the cellphone in question is his
23 personal cellphone, and the State Committee reimbursed the Solicitor's Office for the phone

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1 charges as a means of offsetting budgetary restrictions in Spartanburg County and to mitigate the
2 impact of furloughs being imposed on county employees. Gowdy Affidavit, paragraph 6. He also
3 states that the usage plan for his phone was a flat rate plan with a certain allotment of minutes,
4 which he never exceeded. *Id.* at paragraph 7. However, Mr. Gowdy acknowledges that he used
5 his cellphone for "initiating and receiving some Gowdy for Congress calls," in addition to using it
6 to conduct Solicitor's Office business, South Carolina Prosecution Commission business, personal
7 calls, and State Committee calls. *Id.* As such, it appears the State Committee may have paid some
8 amount for Mr. Gowdy's cellphone usage plan attributable to his federal campaign. Given the use
9 of the cellphone for multiple reasons, and that the State Committee reimbursements to
10 Spartanburg County totaled less than \$1,000, it appears that any amount attributable to the federal
11 campaign was likely *de minimis*. Accordingly, we recommend that the Commission dismiss, as a
12 matter of prosecutorial discretion, the allegation that Harold W. ("Trey") Gowdy III, Trey Gowdy
13 for Congress, and Marvin Quattlebaum, in his official capacity as treasurer, and Gowdy State
14 Solicitor Committee violated 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d) with respect to
15 Trey Gowdy for Congress' cellular phone expenditures. *See Heckler v. Cheney*, 470 U.S. 821
16 (1985).

17 The information provided by the complaint indicating that the State Committee may have
18 made payments for the Committee's postage is insufficient. Contrary to statements made in the
19 complaint that the Committee's 2009 July Quarterly Report showed it made no payments for
20 postage, that Report discloses more than \$800 in direct mail processing and printing expenses in
21 June 2009, the month that Mr. Gowdy filed his statement of candidacy. Further, the Gowdy
22 Committee's 2009 October Quarterly Report, covering the period of July 1, 2009, through
23 September 2009, discloses more than \$3,000 in postage and stationery expenses. That the State

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1 Committee incurred postage and stationery expenses during the same timeframes does not indicate
2 that those expenses were used to benefit the Committee, especially in the face of affidavits
3 generally denying such activity, the facts that Mr. Gowdy was still serving as Solicitor and his
4 State Committee was still active, and the Committee's disclosures for postage expenses in its own
5 disclosure reports. Accordingly, we recommend that the Commission find no reason to believe
6 Harold W. ("Trey") Gowdy III, Trey Gowdy for Congress, and Marvin Quattlebaum, in his
7 official capacity as treasurer, and Gowdy State Solicitor Committee violated 2 U.S.C.
8 § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d) with respect to Trey Gowdy for Congress postage
9 expenditures.

10 **B. Allegation that the Committee Failed to Disclose Expenditures**

11 Committee treasurers must file complete and accurate reports of receipts and
12 disbursements. 2 U.S.C. § 434(b). The complaint alleges that the Committee violated the Act "by
13 not disclosing all relevant expenditures as required by law." Complaint at 2. As an example, the
14 complaint contends that the Committee's disclosure reports do not show any phone expenses,
15 noting that "[c]alls had to have been made and, if so, from what devices?" Complaint at 3.

16 The complaint is correct that the Committee's reports do not disclose expenditures for
17 phone expenses, other than two disbursements disclosed after the complaint and response were
18 submitted, and the joint response does not explicitly explain their absence, except to the extent that
19 Mr. Gowdy used his personal cellphone to make some Gowdy Committee phone calls.⁴ We find
20 the absence of disclosure of phone expenses until late May 2010 unusual, although there may be
21 reasonable explanations. For example, it may be that disbursements made to consultants like
22 George Ramsey, who received multiple disbursements from the Committee in the amount of

⁴ The Committee's 2010 Pre-Runoff Primary Report reflects a May 27, 2010 disbursement to Dan Hoover for mileage and phone expenses totaling \$100.66, while its 2010 July Quarterly Report, filed on July 15, 2010, discloses a \$298 payment to Main Street Wireless for phone lines on June 8, 2010.

1 \$2,500 for "strategic consulting," may have included his telephone calls on behalf of the
2 campaign. The Committee also made disbursements to UTPL and its parent company for an
3 online phone banking program that allows volunteers to make calls. The Committee may also
4 have relied heavily on email, rather than calls. In a July 6, 2009, website posting, Mr. Gowdy
5 states that "[o]ver the next few months I will be sending you a series of emails laying out my plans
6 of how we can change Washington." Finally, Mr. Gowdy may have made many of the federal
7 campaign calls on his personal cellphone, which, as discussed above, may have resulted in the
8 State Committee paying a likely *de minimis* amount for such calls. Given the complaint and
9 supplements' lack of specific information supporting the allegation that the Committee failed to
10 disclose expenditures, other than the cellphone charges discussed *supra*, and the likelihood that
11 any additional undisclosed expenses are relatively small,⁵ it would not be a good use of the
12 Commission's limited resources to investigate whether the Committee failed to accurately disclose
13 its expenditures. Accordingly, we recommend the Commission dismiss, as a matter of
14 prosecutorial discretion, the allegation that Gowdy for Congress and Marvin Quattlebaum, in his
15 official capacity as treasurer, violated 2 U.S.C. § 434(b). *See Heckler v. Cheney*, 470 U.S. 821
16 (1985). Finally, we recommend that the Commission close the file in this matter.

17 **III. RECOMMENDATIONS**

- 18 1. Find no reason to believe that Trey Gowdy for Congress, and Marvin Quattlebaum,
19 in his official capacity as treasurer, violated 2 U.S.C. §§ 441a(f) or 441b,
20 441i(e)(1)(A) and 11 C.F.R. § 110.3(d) with respect to its website expenditures;

⁵ Although the complaint does not specifically point to the absence of expenditures for rent in the Committee's disclosure reports, we note that the Committee discloses a payment for utilities on August 3, 2009, when it disbursed \$558.63 to a plumbing and electrical company, and a payment on August 4, 2009 of \$310 in fees for "internet for campaign headquarters." However, the Committee's first rent disclosures do not appear until its 2009 Year-End Report, showing an October 2009 in-kind contribution of \$480 for office rent from Andrew Smart. While the Committee continued to report in-kind contributions for rent through May 2010, it did not report any rental expenses for June 2010, although the Committee remained active through June when Gowdy won the run-off election on June 22, 2010. Accordingly, it appears that the Committee failed to disclose at least three months worth of disbursements for rent (August 2009, September 2009, and June 2010), estimated at \$1,440, assuming that rent is valued at \$480 per month. Given this *de minimis* amount, an investigation is unwarranted in these circumstances.

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2. Find no reason to believe that Harold W. ("Trey") Gowdy III and the Gowdy State Solicitor Committee violated 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d) with respect to Trey Gowdy for Congress website expenditures;
3. Find no reason to believe that Under the Power Lines violated 2 U.S.C. §§ 441a(a) or 441b;
4. Dismiss the allegation that Trey Gowdy for Congress, and Marvin Quattlebaum, in his official capacity as treasurer, violated 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d) with respect to its cellular phone expenditures;
5. Dismiss the allegation that Harold W. ("Trey") Gowdy III and the Gowdy State Solicitor Committee violated 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d) with respect to Trey Gowdy for Congress cellular phone expenditures;
6. Find no reason to believe that Trey Gowdy for Congress, and Marvin Quattlebaum, in his official capacity as treasurer, violated 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d) with respect to its postage expenditures;
7. Find no reason to believe that Harold W. ("Trey") Gowdy III and the Gowdy State Solicitor Committee violated 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d) with respect to Trey Gowdy for Congress postage expenditures;
8. Dismiss the allegation that Trey Gowdy for Congress, and Marvin Quattlebaum, in his official capacity as treasurer, violated 2 U.S.C. § 434(b);
9. Approve the attached Factual and Legal Analyses;
10. Approve the appropriate letters; and

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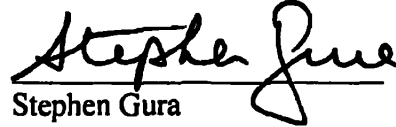
11. Close the file.

Christopher Hughey
Acting General Counsel

9/23/10

Date

BY:


Stephen Gura

Deputy Associate General Counsel for
Enforcement


Susan L. Lebeaux

Acting Deputy Associate General Counsel
for Enforcement


Roy Q. Lockett

Acting Assistant General Counsel

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