



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

Kevin Hall, Esq.  
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OCT 1 2010

RE: MUR 6253  
Harold W. ("Trey") Gowdy III  
Trey Gowdy for Congress, and  
Marvin Quattlebaum, in his official  
capacity as treasurer,  
Gowdy State Solicitor Committee

Dear Mr. Hall:

On February 25, 2010, the Federal Election Commission ("Commission") notified your clients, Harold W. ("Trey") Gowdy III, Trey Gowdy for Congress, and Marvin Quattlebaum, in his official capacity as treasurer, Gowdy State Solicitor Committee and Under the Power Lines, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended, and the Commission's regulations. On September 30, 2010, the Commission found, on the basis of the information in the complaint and information provided by your clients, that there is no reason to believe: Trey Gowdy for Congress, and Marvin Quattlebaum, in his official capacity as treasurer, violated 2 U.S.C. §§ 441a(f) or 441b, and 441i(e)(1)(A) and 11 C.F.R. § 110.3(d) with respect to its website and postage expenditures; and Harold W. ("Trey") Gowdy III and Gowdy State Solicitor Committee violated § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d) with respect to Trey Gowdy for Congress website and postage expenditures. Additionally, the Commission dismissed the allegation that Trey Gowdy for Congress, and Marvin Quattlebaum, in his official capacity as treasurer, Harold W. ("Trey") Gowdy, and 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. Finally, the Commission dismissed the allegation that Trey Gowdy for Congress, and Marvin Quattlebaum, in his official capacity as treasurer, violated 2 U.S.C. 434(b). Accordingly, on September 30, 2010, the Commission closed the file 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) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's finding(s), is enclosed for your information. The Factual and Legal Analysis points out on page 10, footnote 4, that Trey Gowdy for Congress

10044281541

Mr. Kevin Hall  
MUR 6253  
Page 2

("Gowdy Committee") apparently failed to disclose certain rental payments on its disclosure reports submitted to the Commission. The Gowdy Committee may wish to amend its reports accordingly.

If you have any questions, please contact Roy Q. Lockett, the attorney assigned to this matter at (202) 694-1650.

Sincerely,



Susan L. Lebeaux  
Acting Deputy Associate General Counsel  
for Enforcement

Enclosure  
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT:** Harold W. ("Trey") Gowdy III  
Trey Gowdy for Congress and  
Marvin Quattlebaum,  
in his official capacity as treasurer  
Gowdy State Solicitor Committee

**MUR 6253**

**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.

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

In support of his allegation that Mr. Gowdy and the Committee have impermissibly used funds from the State Committee, the Complainant points out that the State Committee disclosed an expenditure of \$6,000 on April 9, 2009, to a firm known as Under the Power Lines ("UTPL")

1 for website design and development for a State Committee website that was never publicly  
2 activated, whereas the Committee disclosed a payment to the same firm of only \$3,806 on  
3 June 29, 2009, for its website development. In an addendum to the complaint, filed on March 4,  
4 2010, Complainant compares the “website development” charges that the Gowdy Committee  
5 paid UTPL, a limited liability company, with UTPL’s far more substantial “website design”  
6 charges in 2008 to another client, Barrett for Congress.<sup>1</sup>

7 In their joint response, Respondents include affidavits refuting the allegations that UTPL  
8 under-billed the Committee or that funds expended by the State Committee for its website were  
9 used to develop the Committee’s website. The Commission has concluded that Respondents’  
10 numerous and specific affidavits should be credited. Accordingly, The Commission has  
11 determined to find no reason to believe that Trey Gowdy, the Committee, and the State  
12 Committee violated 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d), and no reason to believe  
13 the Gowdy Committee violated 2 U.S.C. §§ 441a(f) or 441b in connection with its website  
14 expenditures.

15 The complaint also alleges that the Committee used State Committee funds to pay for its  
16 office expenses relating to postage and telephone fees. As support for this contention, the  
17 complaint notes that the Committee did not disclose any office expenses in its 2009 July  
18 Quarterly Report, while the State Committee’s disclosure reports for the same time period show

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<sup>1</sup> 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 pursuant to 11 C.F.R. § 110.1(e). *See* 11 C.F.R. § 110.1(g)(3). The available information does not indicate which type of tax treatment UTPL elected for its organization.

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1 reimbursement payments to Spartanburg County for "office related expenses and supplies" in the  
2 amounts of \$188.62 on May 20, 2009, and \$166.37 on June 19, 2009, respectively, and  
3 additional reimbursements for office expenses, supplies and phone bills, on July 9, 2009 (\$219),  
4 August 21, 2009 (\$224), September 22, 2009 (\$199.11), October 19, 2009 (\$198.38) and  
5 November 20, 2009 (\$186.50). *See* Complaint at 2 and Attachment 3. In response, Mr.  
6 Gowdy's affidavit describes the circumstances surrounding the State Committee's  
7 reimbursements to Spartanburg County for office expenses, including the usage fees on his  
8 personal cellphone. The affidavit acknowledges that Mr. Gowdy used his cellphone, in part, for  
9 "initiating and receiving some Gowdy for Congress calls," Gowdy Affidavit at paragraph 7, and  
10 it therefore appears that the State Committee expended funds in connection with Mr. Gowdy's  
11 federal campaign cellphone usage fees. However, because such spending was likely *de minimis*,  
12 the Commission has determined to exercise its prosecutorial discretion and dismiss the allegation  
13 that the State Committee violated 2 U.S.C. §441i(e)(A) and 11 C.F.R. § 110.3(d) by paying for  
14 the Committee's cellular phone usage. As to postage expenditures, the Commission has  
15 determined to find no reason to believe that Trey Gowdy, the Committee, and the State  
16 Committee violated 2 U.S.C. §441i(e)(A) and 11 C.F.R. § 110.3(d) as the Committee's  
17 disclosure reports show it spent its own funds for postage expenses, and the complaint provides  
18 no specific information to the contrary.

19 With respect to the allegation that the Committee did not disclose all of its expenditures  
20 for the federal campaign, the Committee's response denies generally that the State Committee  
21 paid any of the Committee's expenses, but does not specifically address the absence of any  
22 payments for telephone costs in its disclosure reports at the time of its response, or affirm  
23 specifically that it reported all of its expenditures. For example, the Committee did not report

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1 spending for phone usage until late May 2010. While there may be reasonable explanations for  
2 the absence of telephone-related expenses on the Committee's reports until late May 2010, on  
3 the basis of the available information, we cannot fully evaluate whether the Committee has  
4 reported all of its expenditures. However, based on indications that the possible undisclosed  
5 expenditures may have been relatively low, the Commission has determined to exercise its  
6 prosecutorial discretion and dismiss the allegations that Gowdy for Congress, and Marvin  
7 Quattlabaum, in his official capacity as treasurer, violated 2 U.S.C. § 434(b).

8 **II. FACTUAL AND LEGAL ANALYSIS**

9 **A. Allegation that the Committee Spent State Committee Funds**

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11 Federal candidates and officeholders, or entities directly or indirectly established,  
12 financed, maintained or controlled by them, are prohibited from soliciting, receiving, directing,  
13 transferring, or spending nonfederal funds, unless the funds are subject to the limitations,  
14 prohibitions, and reporting requirements of the Act. *See* 2 U.S.C. § 441i(e)(1)(A). Further,  
15 Commission's regulations provide, in material part, that transfers of funds or assets from a  
16 candidate's non-federal campaign committee to his or her principal campaign committee for a  
17 federal election are prohibited. *See* 11 C.F.R. § 110.3(d). South Carolina state law permits  
18 contributions to state committees in excess of the federal limits and contributions from  
19 corporations, and none of the state campaign funds at issue were subject to the Act's reporting  
20 provisions as required by Section 441i(e)(1)(A). *See* S.C. Code Ann. 8-13-1314. Thus, if State  
21 Committee funds were used to pay federal campaign expenses, Mr. Gowdy and the Committee  
22 would have received prohibited in-kind contributions from the State Committee, in violation of  
23 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d). *See* MUR 5426 (Dale Schultz for Congress)  
24 (Schultz Federal committee effectively received prohibited transfer of funds when the Schultz

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1 State Committee paid for expenses that the candidate incurred in connection with his federal  
2 election).

3 The Act limits the contributions a person can make, and a candidate can receive, with  
4 respect to a federal election. 2 U.S.C. § 441a. These contributions cannot, in aggregate, exceed  
5 \$2,400 per election. *See* 2 U.S.C. § 441a(a)(1)(A). The Act also prohibits corporate  
6 contributions, including in-kind contributions, to a federal candidate and his or her authorized  
7 political committee, and candidates and their authorized committees are prohibited from  
8 knowingly accepting such contributions. 2 U.S.C. § 441b(a).

9 In response to the complaint, Mr. Gowdy provided a sworn affidavit that states “[a]t no  
10 time have Gowdy for Solicitor campaign funds been used in connection with my congressional  
11 campaign, Gowdy for Congress.” Gowdy Affidavit, paragraph 2. He also declares in his  
12 affidavit that the Gowdy State Committee payments for website services are unrelated to  
13 Gowdy’s congressional campaign. Mr. Gowdy denies that any of the April 2009 website  
14 payments disclosed by the State Committee relate to his federal campaign, and that the website  
15 expenses paid by the State Committee related to “blogs written, photographs used, videos  
16 recorded, and text [that] were solely and exclusively related to my work as a prosecutor.” *See*  
17 Gowdy Affidavit, paragraph 4.

18 In addition, Respondents also provided sworn statements from individuals who were  
19 involved in the State Committee-proposed website. A. Murray Glenn, a public information  
20 officer for the 7<sup>th</sup> Circuit Solicitor’s office, states in his affidavit that in February or March 2009,  
21 he participated in the filming of a video segment for a website that Mr. Gowdy “was having  
22 built,” which focused only on reforming the state criminal justice system, and maintains that  
23 there was no mention of Congress or any discussion of a run for that office. Glenn Affidavit,

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1 paragraph 5. Eric Williams, who owns a media company, states in his affidavit that he filmed a  
2 “short web video introduction” after being approached by Mr. Gowdy in February or March of  
3 2009, and confirms that the content of the video centered on reforming the state criminal justice  
4 system. See Williams Affidavit, paragraphs 3-4. He also states that “[a]t no point in time was  
5 Congress mentioned either on film, before filming or after filming.” *Id.*, paragraphs 5.<sup>2</sup>

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

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<sup>2</sup> 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.



1 Solicitor Committee violated 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d), or that Trey  
2 Gowdy for Congress, and Marvin Quattlebaum, in his official capacity as treasurer, violated  
3 2 U.S.C. §§ 441a(f) or 441b with respect to its website expenditures.

4 With respect to the cellular phone charges for which the State Committee reimbursed  
5 Spartanburg County, Mr. Gowdy states in his affidavit that the cellphone in question is his  
6 personal cellphone, and the State Committee reimbursed the Solicitor's Office for the phone  
7 charges as a means of offsetting budgetary restrictions in Spartanburg County and to mitigate the  
8 impact of furloughs being imposed on county employees. Gowdy Affidavit, paragraph 6. He  
9 also states that the usage plan for his phone was a flat rate plan with a certain allotment of  
10 minutes, which he never exceeded. *Id.* at paragraph 7. However, Mr. Gowdy acknowledges that  
11 he used his cellphone for "initiating and receiving some Gowdy for Congress calls," in addition  
12 to using it to conduct Solicitor's Office business, South Carolina Prosecution Commission  
13 business, personal calls, and State Committee calls. *Id.* As such, it appears the State Committee  
14 may have paid some amount for Mr. Gowdy's cellphone usage plan attributable to his federal  
15 campaign. Given the use of the cellphone for multiple reasons, and that the State Committee  
16 reimbursements to Spartanburg County totaled less than \$1,000, it appears that any amount  
17 attributable to the federal campaign was likely *de minimis*. Accordingly, the Commission has  
18 determined to dismiss, as a matter of prosecutorial discretion, the allegation that Harold W.  
19 ("Trey") Gowdy III, Trey Gowdy for Congress, and Marvin Quattlebaum, in his official capacity  
20 as treasurer, and Gowdy State Solicitor Committee violated 2 U.S.C. § 441i(e)(1)(A) and  
21 11 C.F.R. § 110.3(d) with respect to Trey Gowdy for Congress' cellular phone expenditures. *See*  
22 *Heckler v. Cheney*, 470 U.S. 821 (1985).

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1           The information provided by the complaint indicating that the State Committee may have  
2   made payments for the Committee's postage is insufficient. Contrary to statements made in the  
3   complaint that the Committee's 2009 July Quarterly Report showed it made no payments for  
4   postage, that Report discloses more than \$800 in direct mail processing and printing expenses in  
5   June 2009, the month that Mr. Gowdy filed his statement of candidacy. Further, the Gowdy  
6   Committee's 2009 October Quarterly Report, covering the period of July 1, 2009, through  
7   September 2009, discloses more than \$3,000 in postage and stationery expenses. That the State  
8   Committee incurred postage and stationery expenses during the same timeframes does not  
9   indicate that those expenses were used to benefit the Committee, especially in the face of  
10   affidavits generally denying such activity, the facts that Mr. Gowdy was still serving as Solicitor  
11   and his State Committee was still active, and the Committee's disclosures for postage expenses  
12   in its own disclosure reports. Accordingly, the Commission has determined to find no reason to  
13   believe Harold W. ("Trey") Gowdy III, Trey Gowdy for Congress, and Marvin Quattlebaum, in  
14   his official capacity as treasurer, and Gowdy State Solicitor Committee violated 2 U.S.C.  
15   § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d) with respect to Trey Gowdy for Congress postage  
16   expenditures.

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

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

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1           The complaint is correct that the Committee's reports do not disclose expenditures for  
2 phone expenses, other than two disbursements disclosed after the complaint and response were  
3 submitted, and the joint response does not explicitly explain their absence, except to the extent  
4 that Mr. Gowdy used his personal cellphone to make some Gowdy Committee phone calls.<sup>3</sup> The  
5 absence of disclosure of any phone expenses phone expenses until late May 2010 appear  
6 unusual, although there may be reasonable explanations. For example, it may be that  
7 disbursements made to consultants like George Rainey, who received multiple disbursements  
8 from the Committee in the amount of \$2,500 for "strategic consulting," may have included his  
9 telephone calls on behalf of the campaign. The Committee also made disbursements to UTPL  
10 and its parent company for an online phone banking program that allows volunteers to make  
11 calls. The Committee may also have relied heavily on email, rather than calls. In a July 6, 2009,  
12 website posting, Mr. Gowdy states that "[o]ver the next few months I will be sending you a  
13 series of emails laying out my plans of how we can change Washington." Finally, Mr. Gowdy  
14 may have made many of the federal campaign calls on his personal cellphone, which, as  
15 discussed above, may have resulted in the State Committee paying a likely *de minimis* amount  
16 for such calls. Given the complaint and supplements' lack of specific information supporting the  
17 allegation that the Committee failed to disclose expenditures, other than the cellphone charges  
18 discussed *supra*, and the likelihood that any additional undisclosed expenses are relatively

<sup>3</sup> 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 small,<sup>4</sup> it would not be a good use of the Commission's limited resources to investigate whether  
2 the Committee failed to disclose any expenditures.

3 Accordingly, the Commission has determined to dismiss, as a matter of prosecutorial ...  
4 discretion, the allegation that Gowdy for Congress and Marvin Quattlebaum, in his official  
5 capacity as treasurer, violated 2 U.S.C. § 434(b). *See Heckler v. Cheney*, 470 U.S. 821 (1985).

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<sup>4</sup> Although the complaint does not specifically point to the absence of expenditures for rent in the Committee's disclosure reports, the Commission notes 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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