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FIRST GENERAL COUNSEL'S REPORT

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DATE RECEIVED: Oct. 12, 2011

DATE OF NOTIFICATION: Oct. 18, 2011

LAST RESPONSE RECEIVED: Nov. 16, 2011

DATE ACTIVATED: Jan. 5, 2012

EARLIEST SOL: Aug. 1, 2016

LATEST SOL: Aug. 18, 2016

COMPLAINANT:

Ray Buckley, New Hampshire Democratic Party

RESPONDENT:

Congressman Frank Guinta

RELEVANT STATUTES:

2 U.S.C. § 441i(e)

2 U.S.C. § 441a(a)

11 C.F.R. § 300.2(m)

11 C.F.R. § 300.61

11 C.F.R. § 300.62

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

This matter stems from an allegation that Congressman Frank Guinta violated 2 U.S.C. § 441i(e) and 11 C.F.R. §§ 300.61 and 300.62 by soliciting funds from the Republican Governors Association ("RGA") for the Republican Party of New Hampshire ("State Party") outside the limitations and prohibitions set forth in the Federal Election Campaign Act of 1971, as amended ("the Act"). The allegation is based on information contained in a newspaper article reporting that, while on a conference call with other state and federal officeholders

1 regarding fundraising for the State Party, Congressman Guinta stated that he had been hoping "to
2 get up to \$100,000 from the Republican Governors Association" but that the RGA told him that
3 "they just can't see putting money in that direction. Congressman Guinta submitted a response
4 to the complaint ("Response") "emphatically" denying the allegations and attaching a sworn
5 affidavit supporting the denial.

6 Based on the available information, we recommend that the Commission find no reason
7 to believe that Representative Guinta violated the Act and Commission regulations.

8 **II. FACTUAL AND LEGAL ANALYSIS**

9 **A. Facts**

10 The *New Hampshire Union Leader* reported that the Republican Party of New Hampshire
11 held two fundraising meetings on August 19, 2011, attended by New Hampshire state and federal
12 officeholders, including Representative Guinta. See Attachment 1, John DiStaso, *GOP Officials*
13 *Told Kimball Donors Were Concerned About "Disarray,"* N.H. Union Leader, Aug. 26, 2011.
14 According to the article, the first meeting was a conference call between Congressman Guinta,
15 Congressman Charlie Bass, U.S. Senator Kelly Ayotte, New Hampshire Speaker of the House
16 William O'Brien, and New Hampshire Sonate President Peter Bragdon. The article cites an
17 unnamed source "familiar with [the] conference call" who stated that, during the call, "the
18 subject of party fund-raising difficulties was discussed" and that "Guinta mentioned that he . . .
19 he had been hoping 'to get up to \$100,000 from the Republican Governors Association.'" ² *Id.*
20 The article also reported that, following the conference call, there was a second, face-to-face

² The Republican Governors Association is a section 527 organization, the primary mission of which is to "help elect Republicans to governorships throughout the nation." See www.rga.org. The RGA is not registered as a political committee with the Commission, and is able to accept funds that do not comply with the limitations and prohibitions the Act imposes on political committees.

1 meeting where the fundraising issue was discussed further. The unnamed source was reportedly
2 present at this meeting, which was attended by O'Brien, New Hampshire State Party Chairman
3 Jack Kimball, and "a former Kimball supporter and congressional hopeful Jennifer Horn." *Id.*
4 During the meeting O'Brien reportedly informed Kimball that "party leaders' requests for
5 donations were being refused" and, when asked for an example, "O'Brien mentioned that he had
6 been told by Guinta that the RGA had refused a donation request." *Id.* According to the source,
7 "O'Brien told him that they 'could not even begin the conversation' with the RGA 'because of
8 Jack's inability to run this party competently. And that's as far as it went.'" *Id.*

9 In the Response, Congressman Guinta denies the allegations, which he says are "totally
10 false." He claims that the complaint rests on "an erroneous news article containing hearsay
11 repor(s) [*sic*] of alleged conversation(s) that never took place." Response at 1. His Response
12 includes a sworn affidavit explicitly stating that he "never initiated any contact(s) with the
13 Republican Governors Association" and "never solicited contribution(s) from the RGA for any
14 purpose." Guinta Affidavit dated November 4, 2011. In response to a request for clarification
15 from the Office of the General Counsel, counsel for Congressman Guinta stated that he has
16 "never had any communications or contacts with anyone at or representing the RGA other than
17 [a] brief introduction at the airport" by a mutual acquaintance, which was "wholly non-
18 substantive and consisted purely of pleasantries." Letter from Cleta Mitchell, Counsel to
19 Congressman Frank Guinta, to Kathleen Guith, Deputy Associate General Counsel, Federal
20 Election Commission (April 17, 2012).

21 A review of the RGA's 2011 year-end tax filing (IRS Form 8872) does not disclose any
22 contributions made to the State Party between July 1, 2011 and December 31, 2011. Nor does

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1 the State Party's 2011 Year-End Report, filed with the Commission and covering the same time
2 period, show any contributions received from the RGA.

3 **B. Legal Analysis**

4 Based on the factual account depicted in the newspaper article, Complainant alleges that
5 Congressman Guinta violated 2 U.S.C. § 441i(e) and 11 C.F.R. §§ 300.61 and 300.62 by
6 soliciting funds for the State Party that do not comply with federal source restrictions and
7 contribution limits. According to the complaint:

8 As the press reports indicate, Rep. Guinta personally solicited illegal funds for the
9 State Party. Rep. Guinta's own remarks show that he solicited a contribution of
10 up to \$100,000 from the RGA, as well as contributions from other groups, for the
11 State Party. The solicited contribution would have exceeded the federal limits,
12 and would have consisted of federally impermissible funds, including corporate
13 treasury funds.

14
15 Complaint at 3.³

16 Under the Act, candidates or individuals holding federal office, or their agents
17 (collectively, "covered persons"), may not solicit funds in connection with a non-federal election
18 unless the funds are not in excess of the amounts permitted in 2 U.S.C. § 441a(a) and are not
19 from prohibited sources. 2 U.S.C. § 441i(e)(1)(B), 11 C.F.R. §§ 300.61 and 300.62.
20 Corresponding provisions prohibit covered persons from soliciting funds for a political
21 committee established and maintained by a state committee of a political party in any calendar
22 year which, in the aggregate, exceed \$10,000. 2 U.S.C. § 441a(a)(1)(D). Pursuant to
23 Commission regulations, "to solicit means to ask, request, or recommend, explicitly or

³ The complaint also includes unsupported mention of Guinta allegedly contacting several national groups for money in addition to RGA. Because these bald allegations have no support, we focus our analysis on the factual allegations regarding the RGA. In addition, we note that the Act does not preclude Guinta from soliciting funds in connection with non-federal elections for the State Party; such solicitation must simply be confined to amounts and sources that comply with the limits and prohibitions of the Act. See 2 U.S.C. § 441i(e)(1)(B).

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1 implicitly, that another person make a contribution, donation, transfer of funds, or otherwise
2 provide anything of value.” 11 C.F.R. § 300.2(m).

3 As a federal officeholder and federal candidate, Congressman Guinta is a covered person
4 pursuant to 2 U.S.C. § 441i(e)(1)(B). Consequently, he is prohibited from soliciting funds in
5 connection with a non-federal election in amounts exceeding the limitations of the Act. For state
6 political committees like the New Hampshire Republican Party, the federal contribution limit is
7 \$10,000 per year. Therefore, if Congressman Guinta solicited \$100,000 from the RGA, as
8 alleged, he would have violated 2 U.S.C. § 441i(e)(1)(B).

9 The Commission will find “reason to believe” in matters only where the available
10 evidence is at least sufficient to warrant conducting an investigation and where the seriousness of
11 the alleged violation warrants either further investigation or immediate conciliation. See
12 Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the
13 Enforcement Process, 72 Fed. Reg. 12,545 (March 16, 2007). Here, the available information is
14 not sufficient to establish reason to believe that Congressman Guinta engaged in the alleged
15 conduct in violation of the Act.

16 The core of the complaint’s allegation rests on unreliable double hearsay: a newspaper
17 article quoting “unnamed sources.”⁴ By contrast, Congressman Guinta provides a sworn
18 affidavit flatly denying the allegations: “the allegations in the complaint are false . . . I never
19 initiated any contact(s) with the Republican Governors Association . . .” and “never solicited
20 contribution[s] from the RGA for any purpose.” See Guinta Affidavit.

⁴ The article’s report on the conference call may actually be based on triple hearsay. It is unclear whether the unnamed source that provided the information about Congressman Guinta’s purported statements during the conference call was actually present on the call. The newspaper article states only that the source “was also *familiar with* [the] conference call.” DiStaso at 1 [emphasis added]. In contrast, the article specifically notes that the source actually attended the face-to-face meeting. *Id.*

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1 The allegations in this newspaper article -- when viewed alongside the sworn denial of
2 Congressman Guinta -- simply do not provide an adequate foundation for a finding that there is
3 reason to believe that Congressman Guinta violated the Act. *See, e.g., Buchanan v. FEC*, 112 F.
4 Supp. 2d 58, 72 (D.D.C. 2000) ("the [Commission] is expected to weigh the evidence before it
5 and make credibility determinations in reaching its ultimate decision"). Accordingly, we
6 recommend that the Commission find no reason to believe that Congressman Frank Guinta
7 violated 2 U.S.C. § 441i(e).

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III. RECOMMENDATIONS

1. Find no reason to believe that Congressman Frank Guinta violated 2 U.S.C. § 441i(e).
2. Approve the attached Factual & Legal Analysis.
3. Approve the appropriate letters.
4. Close the file.

Anthony Herman
General Counsel

Daniel A. Petalas
Associate General Counsel

4-30-12
Date

BY: Kathleen Guith
Kathleen Guith
Deputy Associate General Counsel

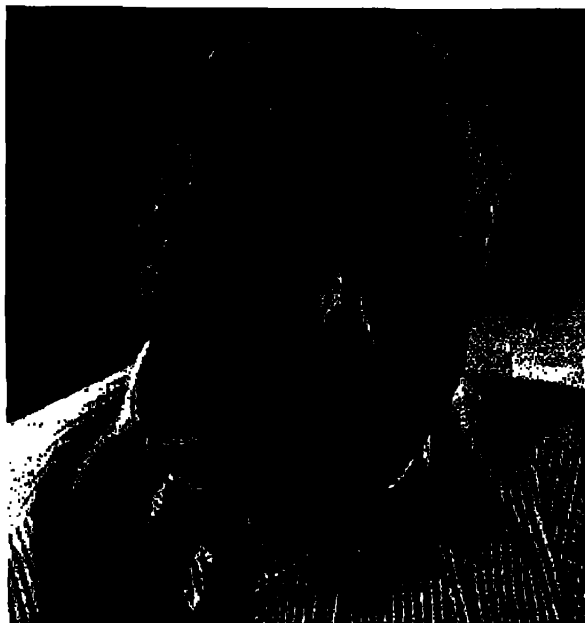
Mark Shonkwiler
Mark Shonkwiler
Assistant General Counsel

Margaret Ritzert Howell
Margaret Ritzert Howell
Attorney

Attachments:

1. August 26, 2011 Article

GOP officials told Kimball donors were concerned about "disarray"



JACK KIMBALL

The New Hampshire Union Leader has learned more details of a meeting a week ago involving Kimball, New Hampshire Speaker of the House William O'Brien and former Kimball supporter and congressional hopeful Jennifer Horn from a source who attended the meeting at Kimball's Portsmouth office.

By JOHN DiSTASO
Senior Political Reporter

CONCORD -- Embattled GOP Chairman Jack Kimball was told behind closed doors a week ago that a major national Republican group was concerned about giving the state Republican Party money because it was "in disarray" under his leadership.

The New Hampshire Union Leader has learned more details of the meeting involving Kimball, New Hampshire Speaker of the House William O'Brien and former Kimball supporter and congressional hopeful

Jennifer Horn from a source who attended the meeting at Kimball's Portsmouth office on Aug. 19.

The source was also familiar with a conference call prior to the meeting that included O'Brien, state Senate President Peter Bragdon, U.S. Sen. Kelly Ayotte and U.S. Reps. Frank Guinta and Charlie Bass.

During that call, the source said, the subject of party fund-raising difficulties was discussed.

All of the officials said they had been trying to raise money but were hearing donors say, according to the source, "that they were not going to waste money over there. The party is being ineptly run."

Guinta mentioned that he had contacted several national groups for money and that he had been hoping "to get up to \$100,000 from the Republican Governors Association," the source said.

But Guinta told the group that "before any money was discussed, he was told by the RGA that they must put their resources where "they are going to be useful and not wasted and they think that the party is so badly run, that Jack Kimball has so little ability to get the message out that they just can't see putting money in that direction," according to the source.

When O'Brien later went to the face-to-face meeting with Kimball, accompanied by Horn, "all of the issues" were discussed, the source said.

O'Brien told Kimball that party leaders' requests for donations were being refused by both in-state donor and out-of-state donors "because they don't want to waste their money," the source said.

When Kimball asked for examples, the source said, O'Brien mentioned that he had been told by Guinta that the RGA had refused a donation request.

The RGA earlier this week denied withholding money from the state party.

Kimball then accused the RGA of "withholding money to get rid of him," said the source.

O'Brien told him that they "could not even begin the conversation" with the RGA "because of Jack's inability to run this party competently. And that's as far as it went," said the source.

"We're being told donor's won't give," O'Brien told Kimball, according to the source.

The source also said the delegation members never did say they would personally withhold money unless Kimball stepped down, as a conservative web log reported and as Kimball has confirmed.

Earlier this week, Ayotte, Guinta, Bass, O'Brien and Bragdon asked Kimball to resign. They and the state's two Republican National Committee members headed a letter notifying party executive committee members that there will be an effort to remove Kimball at a committee meeting next Thursday, Sept. 1.

The source said O'Brien feels that the proverbial handwriting is on the wall for Kimball, that even more than the 22 members of the 36-member committee who signed the letter are now committed to removing Kimball.

O'Brien, who nominated Kimball for party chairman in January, still considers Kimball a friend, the source said, and hopes Kimball would resign "with dignity."

Horn, the source said, did not attend the meeting to urge Kimball to resign but rather to point out that "if the five top elected Republican officials in the state are telling you it's time to go, it probably is."

O'Brien is hoping for a smooth transition to have current state party vice chairman Wayne MacDonald take over as chairman, the source said. The speaker also hopes that a Tea Party activist, like Kimball, can be named vice chairman in an attempt to restore party unity.

O'Brien is planning to meet with Republican House members next Tuesday to discuss the Kimball situation, the source said. He also plans to talk to activists about the situation at Tea Party and 9/12 meetings.

Attachment 1
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