



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**BEFORE THE FEDERAL ELECTION COMMISSION**

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3  
4 In the Matter of )  
5 ) MUR 6518  
6 Newt Gingrich )  
7 Callista Gingrich )  
8 Newt 2012, Inc. and )  
9 Lisa Lisker in her official )  
10 capacity as treasurer )  
11 Gingrich Productions, Inc. )  
12

**STATEMENT OF REASONS OF  
CHAIRMAN MATTHEW S. PETERSEN AND  
COMMISSIONERS CAROLINE C. HUNTER AND LEE E. GOODMAN**

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16  
17 The Complaint in this matter alleged that the financing and staffing of certain events held  
18 during the 2012 presidential campaign of former House Speaker Newt Gingrich, and the sale of a  
19 mailing list to Newt 2012, Newt Gingrich's principal campaign committee, violated the Federal  
20 Election Campaign Act of 1971, as amended (the "Act").<sup>1</sup> We voted against finding reason to  
21 believe Respondents violated the Act because we do not believe the facts presented in the  
22 Complaint and the responses thereto establish any violations.  
23

24 **I. Factual and Procedural Background**  
25

26 Gingrich Productions is a for-profit corporation that produces, sells, and promotes books  
27 and other media created by Newt and Callista Gingrich.<sup>2</sup> According to the Complaint and  
28 response, Newt and Callista Gingrich appeared at a number of Gingrich Productions events to  
29 promote their books and other works while Newt Gingrich was a candidate for the 2012  
30 Republican presidential nomination.<sup>3</sup> During the Gingriches' travels, they appeared at both  
31 Gingrich Productions events and campaign events, which sometimes coincided.<sup>4</sup>

<sup>1</sup> See Newt 2012, Statement of Organization (May 16, 2011), available at [http://docquery.fec.gov/cgi-bin/fecimg?\\_11030604605+0](http://docquery.fec.gov/cgi-bin/fecimg?_11030604605+0); Newt Gingrich, Statement of Candidacy (May 16, 2011), available at [http://docquery.fec.gov/cgi-bin/fecimg?\\_11030604611+0](http://docquery.fec.gov/cgi-bin/fecimg?_11030604611+0).

<sup>2</sup> MUR 6518 (Newt Gingrich, *et al.*), Compl. (Dec. 19, 2011) ¶ 11; MUR 6518 (Newt Gingrich, *et al.*), Resp. (Feb. 9, 2012) at 6, 18.

<sup>3</sup> MUR 6518 (Newt Gingrich, *et al.*), Compl. ¶¶ 22-23; MUR 6518 (Newt Gingrich, *et al.*), Resp. at 6.

<sup>4</sup> MUR 6518 (Newt Gingrich, *et al.*), Resp. at 19.

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2           **A. The Complaint and First Response**  
3

4           The Complaint contained four allegations addressing three discrete issues: payment for  
5 certain events, the collection of email addresses at these events, and the sale of a mailing list to  
6 Newt 2012. Specifically, Complainants first alleged that these were “dual purpose” events  
7 promoting both Newt Gingrich’s candidacy and the sale of his books, and that Gingrich  
8 Productions made an illegal corporate contribution to Newt 2012 by paying a portion of the  
9 events’ expenses and by collecting the email addresses of people attending the events for use in  
10 Newt 2012’s future fundraising efforts. Second, Complainants alleged that Newt or Callista  
11 Gingrich, or both, in their capacities as chief executive officer of Gingrich Productions,<sup>5</sup> illegally  
12 facilitated the making of contributions by authorizing the use of the company’s funds to pay for  
13 the email addresses to be collected and by authorizing the transfer of a mailing list owned by  
14 Gingrich Productions to Newt 2012 in the second quarter of 2011. Third, Complainants alleged  
15 that Newt Gingrich illegally converted campaign funds to personal use by accepting \$42,000  
16 from Newt 2012 as payment for the company’s mailing list. Finally, Complainants alleged that  
17 Newt 2012 and its treasurer did not disclose a disbursement to Newt Gingrich for the mailing  
18 list. As support for their allegations, Complainants provided three unsworn newspaper articles  
19 about the events and a copy of Newt Gingrich’s 2011 public financial disclosure report for  
20 Executive Branch personnel.<sup>6</sup>  
21

22           Respondents denied each of the allegations in a joint response. First, while  
23 acknowledging that Newt and Callista Gingrich’s schedules frequently required Gingrich  
24 Productions to hold the couple’s product promotional appearances “in close proximity” to Newt  
25 Gingrich’s campaign events, Respondents asserted that Newt 2012 and Gingrich Productions  
26 implemented a “necessary wall of separation” between campaign and business activities through  
27 “separately-scheduled, separately-funded, and separately-staffed events.”<sup>7</sup> They stated that  
28 Gingrich Productions had “borne” the costs of “[a]ll business activities[,], travel, and other  
29 expenses associated with the sale and promotion of Gingrich Productions products,” and that

<sup>5</sup> Callista Gingrich replaced Newt Gingrich as the chief executive officer of Gingrich Productions “[s]hortly before” Newt Gingrich became a candidate. MUR 6518 (Newt Gingrich, et al.), Resp. at 4; *see also* MUR 6518 (Newt Gingrich, et al.), Compl. ¶¶ 13-14, 17.

<sup>6</sup> MUR 6518 (Newt Gingrich, et al.), Compl., Ex. 9, Dan Eggen, *Gingrich Fighting Massive Debt Racked Up In Campaign’s Extravagant Early Days*, WASH. POST, Dec. 6, 2011 (“Eggen Article”); MUR 6518 (Newt Gingrich, et al.), Compl., Ex. 10, Amy Gardner, *Gingrich’s Book-Selling Efforts Test Law*, WASH. POST, Dec. 8, 2011 (“Gardner Article”); MUR 6518 (Newt Gingrich, et al.), Compl., Ex. 11, Trip Gabriel, *Gingrich, Ahead in Polls, Is Still Selling Books*, N.Y. TIMES, Dec. 8, 2011 (“Gabriel Article”); MUR 6518 (Newt Gingrich, et al.), Compl., Ex. 8, Executive Branch Personnel Public Financial Disclosure Rpt. filed by Newt Gingrich (July 14, 2011) (“Gingrich Financial Disclosure Rpt.”). Gingrich filed the Financial Disclosure Report with the Commission under the Ethics in Government Act of 1978. *See* 5 U.S.C. app. 6 §§ 101-112.

<sup>7</sup> MUR 6518 (Newt Gingrich, et al.), Resp. at 7, 19.

1 Newt 2012 had "borne" the costs of "all political activities, travel, and other expenses associated  
2 with the presidential campaign of Speaker Gingrich."<sup>8</sup>  
3

4 Second, Respondents denied that Gingrich Productions had used corporate resources to  
5 engage in fundraising activities for Newt 2012 or otherwise to facilitate the making of political  
6 contributions in violation of 11 C.F.R. § 114.2(f). They stated that Gingrich Productions "has  
7 done nothing in this instance to pay for the collection of e-mail addresses or the sale of books for  
8 the purpose of soliciting future contributions to Newt 2012."<sup>9</sup>  
9

10 Third, Respondents denied that the mailing list purchased by Newt 2012 had in any way  
11 come from Gingrich Productions and stated that it "was solely the personal property of Speaker  
12 Gingrich."<sup>10</sup> They explained that Newt Gingrich did not disclose the mailing list as an asset on  
13 his 2011 public financial disclosure report because that report compels the disclosure only of  
14 assets held for investment or the production of income with a fair market value in excess of  
15 \$1,000 as of the close of the reporting period, or that generated more than \$200 in income during  
16 the reporting period.<sup>11</sup> Given that, "at the time of the report's filing, the Speaker neither held his  
17 personal mailing list for the direct purpose of financial investment or the production of income,  
18 nor had he actually received any compensation for granting Newt 2012 access to it," there was  
19 "no reason" for him to disclose it.<sup>12</sup>  
20

21 Finally, Respondents denied that Newt 2012 had failed to disclose its disbursement for  
22 the mailing list. Respondents explained that Newt 2012 decided to purchase the list in the  
23 second quarter of 2011 but did not pay for it until the last quarter of the year. Accordingly, Newt  
24 2012's July 2011 Quarterly Report disclosed the fair market value of the mailing list as a debt  
25 owed to Newt Gingrich, and its year-end report disclosed the value of the list as a disbursement  
26 when the debt was paid.<sup>13</sup> Respondents acknowledged that Newt 2012 had "inadvertently  
27 omitted" the debt from its October 2011 Quarterly Report, but stated that it had since filed an  
28 amended Quarterly Report "[t]o correct this minor error."<sup>14</sup>  
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<sup>8</sup> *Id.* at 13-14.

<sup>9</sup> *Id.* at 17.

<sup>10</sup> *Id.* at 23.

<sup>11</sup> *Id.* at 24.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 29-30. According to Respondents, the fair market value of the mailing list was \$47,005, not \$42,000 as alleged in the Complaint.

<sup>14</sup> MUR 6518 (Newt Gingrich, et al.), Resp. at 30, n.9.

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1 As support for their assertions, Respondents provided the sworn declarations of the  
2 treasurer of Newt 2012 and the chief operating officer of Gingrich Productions.<sup>15</sup>  
3

4 **B. Further Inquiry by Office of General Counsel**  
5

6 Six months after receiving their response, OGC sent Respondents a letter “invit[ing]”  
7 them to “clarify” it.<sup>16</sup> The letter asked Respondents to provide information on (1) steps taken to  
8 schedule, fund, and staff separately the events discussed in the Complaint and its attachments;  
9 (2) the location and timing of each event, particularly the proximity of Gingrich Productions’s  
10 events to Newt 2012’s events; (3) the distribution and apportionment of event expenses,  
11 including travel, promotion, space rental, and other shared costs; (4) certain “frameworks” and  
12 “protocols” referred to in the response; and (5) how the frameworks or protocols were applied to  
13 events held in the same or nearby locations. OGC also “invite[d]” Respondents “to supplement  
14 their response” by addressing an issue not raised by Complainants, but mentioned in two  
15 unsworn newspaper articles attached to the Complaint: “the extent to which the use of the  
16 campaign’s website to promote Gingrich Productions’s products complies with restrictions in the  
17 Act and Commission regulations concerning the personal use of committee funds.”<sup>17</sup>  
18

19 Respondents answered OGC’s inquiries in a supplemental response.<sup>18</sup> The information  
20 provided in this supplemental response forms the basis for most of OGC’s recommendations that  
21 the Commission find reason to believe that Respondents violated the Act and Commission  
22 regulations.  
23

<sup>15</sup> See MUR 6518 (Newt Gingrich, *et al.*), Resp., Ex. 8 (Declaration of Lisa Lisker, Treasurer and Custodian of Records, Newt 2012) (“Lisker Declaration”); MUR 6518 (Newt Gingrich, *et al.*), Resp., Ex. 9 (Declaration of Alicia Melvin, Chief Operating Officer, Gingrich Productions, Inc.) (“Melvin Declaration”).

<sup>16</sup> Letter from Kathleen Guith, Deputy Associate General Counsel for Enforcement, to Stefan C. Passantino and Benjamin P. Keane, Counsel to Respondents (Aug. 8, 2012) (“OGC Letter”) at 1.

<sup>17</sup> *Id.* at 2.

<sup>18</sup> MUR 6518 (Newt Gingrich, *et al.*), Supplemental Resp. (Sept. 21, 2012). The supplemental response explained that, “[t]o maximize the number of appearances during 2011 and 2012, Gingrich Productions was often forced to organize, plan and hold events in cities, towns and localities close to where the Speaker and his wife were engaged in campaigning,” and campaign and business events occurring in “adjacent or nearly-adjacent time slots” often “were held in different meeting rooms of large conference hotels or in restaurants or businesses in very close proximity to one another.” *Id.* at 3. The supplemental response further asserted that Newt 2012 and Gingrich Productions used a “firewall” with respect to staffing and funding. *Id.* The supplemental response includes the sworn declaration of Gingrich’s executive assistant and personal scheduler, Elizabeth Davis Kelly, who was a Newt 2012 employee during the campaign. *Id.*, Ex. 1, Declaration of Elizabeth Davis Kelly (“Kelly Declaration”). Ms. Kelly attests that she was responsible for scheduling both types of events and gave her “concerted best efforts to ensure that the Speaker’s daily schedule at all times reflected a clear separation between campaign and Gingrich Productions events.” *Id.*, Ex. 1, Kelly Declaration ¶ 5.



1 address of each person to whom the committee made an expenditure in excess of \$200 in the  
2 election cycle, and the date, amount, and purpose of the expenditure.<sup>28</sup>  
3

4 **A. *There Is No Reason to Believe Respondents Violated Act***  
5

6 The facts set forth in the Complaint fail to support a finding of reason to believe that  
7 Respondents made or accepted an impermissible corporate contribution or converted campaign  
8 funds to personal use.  
9

10 **1. *Gingrich Productions's Book Signings and Promotional Events***  
11

12 In support of Complainants' allegations regarding so-called "dual purpose events," the  
13 Complaint quotes and cites two unsworn press accounts. One quoted account reports that  
14 "assistants from the campaign and the business mingled to manage the crowd and the candidate"  
15 at Gingrich book signings, and "[t]he Gingriches collect signatures of people waiting to have  
16 their books signed, and those names are funneled into [Newt Gingrich's] political mailing list."<sup>29</sup>  
17 The other states that, "[a]lthough some buyers are under the impression that sales of [the  
18 Gingriches'] books, like T-shirts or coffee mugs, support the campaign, the proceeds go to the  
19 Gingriches personally."<sup>30</sup> This article provides the sole support for Complainants' allegation that  
20 email addresses were collected at the events for campaign purposes, although it is not quoted or  
21 cited for this proposition in the Complaint.<sup>31</sup>  
22

23 Respondents dispute these claims. They counter that "both Newt 2012 and Gingrich  
24 Productions have taken all necessary and proper precautions to prevent direct or indirect  
25 violations [of the ban on corporate contributions] by seeking and following comprehensive legal  
26 advice related to the separation of campaign and business conduct."<sup>32</sup>  
27

28 As a threshold matter, we observe that unsworn news reports by authors who are not first-  
29 hand complainants or witnesses before the Commission present legal and practical problems for  
30 the Commission and respondents and, in any event, may be of limited probative value. The Act  
31 requires complaints to be sworn subject to penalty of perjury.<sup>33</sup> Because journalists often write  
32 quickly and their observations may be factually incorrect, complaints based upon an author's

<sup>28</sup> 52 U.S.C. § 30104(b)(5)(A); 11 C.F.R. § 104.9(a).

<sup>29</sup> MUR 6518 (Newt Gingrich, *et al.*), Compl. ¶ 22 (quoting Compl., Ex. 10, Gardner Article) (emphasis omitted).

<sup>30</sup> *Id.* ¶ 23 (quoting Compl., Ex. 11, Gabriel Article).

<sup>31</sup> See MUR 6518 (Newt Gingrich, *et al.*), Compl., Ex. 11, Gabriel Article at 3 ("At readings, aides collect customers' e-mails to add to fund-raising pitches for the campaign.").

<sup>32</sup> MUR 6518 (Newt Gingrich, *et al.*), Resp. at 12.

<sup>33</sup> 52 U.S.C. § 30109(a)(1).

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1 unsworn summary observations or paraphrases provide questionable legal and factual bases upon  
2 which to substantiate a reason to believe finding. However, even were we to credit the  
3 representations in articles attached to the Complaint here, they would fail to provide a reason to  
4 believe that Respondents violated the Act or Commission regulations.  
5

6 With regard to the collection of email addresses, the Commission considered a similar  
7 question in Advisory Opinion 2011-02 (Brown). Three Commissioners voted to approve a draft  
8 opinion concluding that a candidate's authorized committee could collect the email addresses of  
9 people attending the candidate's book signings and promotional events for the express purpose  
10 of later soliciting contributions from the attendees.<sup>34</sup> In reaching this conclusion, the draft  
11 opinion acknowledged that the corporate-sponsored events must be separate from the candidate's  
12 fundraising events,<sup>35</sup> but "the mere collection of email addresses at [the book signings and  
13 promotional] events, even if the people who provide those email addresses receive future  
14 solicitations from the [candidate's committee], does not convert these events into fundraising  
15 events or events in connection with a Federal election."<sup>36</sup> Accordingly, under the reasoning in  
16 the draft opinion, the candidate could collect email addresses at the corporate-sponsored events  
17 for use in future fundraising without receiving an impermissible contribution.<sup>37</sup>  
18

19 We continue to support the reasoning put forward in that draft opinion, and find nothing  
20 in the record before the Commission that materially distinguishes the events at issue here from  
21 those presented in Advisory Opinion 2011-02 (Brown). Thus, for us, the same reasoning in that  
22 draft opinion is dispositive here. A non-campaign event such as a book signing does not become  
23 a campaign event merely because a campaign committee collects attendees' email addresses.  
24 Accordingly, Gingrich Productions's payment of expenses for these events would not be a  
25 corporate contribution to Newt 2012 even if Newt 2012 collected attendees' email addresses for  
26 future campaign use. Moreover, the permissible collection of email addresses by the candidate  
27 and his staff would explain the "participation of Newt 2012" in the book events, as alleged in the  
28 Complaint.<sup>38</sup> Finally, because the resulting list would be the property of the campaign, not  
29 Gingrich Productions, the list would not be a corporate resource, and its use could not form the  
30 basis for a corporate facilitation claim.  
31

<sup>34</sup> Advisory Opinion 2011-02 (Brown), Agenda Document No. 11-09 (Draft A) at 15; Advisory Opinion 2011-02 (Brown), Certification dated Feb. 18, 2011 (indicating that Commissioners Hunter, McGahn, and Petersen voted affirmatively to approve Draft A). While the Commission approved responses to several of the questions in Advisory Opinion 2011-02 (Brown), the Commission did not approve a response with respect to the collection of email addresses at book signings.

<sup>35</sup> Advisory Opinion 2011-02 (Brown), Agenda Document No. 11-09 (Draft A) at 13 (relying on Advisory Opinion 1982-16 (Green)).

<sup>36</sup> *Id.* at 15.

<sup>37</sup> *Id.*

<sup>38</sup> MUR 6518 (Newt Gingrich, et al.), Compl. ¶ 24.

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1 Furthermore, even assuming that attendees' email addresses were collected by Gingrich  
2 Productions's personnel and later provided to the campaign, the amount of any such contribution  
3 should be based on the marginal cost to the corporation of collecting the addresses at the event,  
4 which would surely be *de minimis* and not worth the extensive costs to the Commission and  
5 Respondents to pursue further through the administrative enforcement process.

6  
7 **2. Sale and Use of Mailing List**  
8

9 In support of their allegation that a mailing list obtained by Newt 2012 actually belonged  
10 to Gingrich Productions, Complainants cite to Newt Gingrich's public financial disclosure report  
11 filed with the FEC in the summer of 2011. The report did not disclose the mailing list as an asset  
12 owned by Newt Gingrich between January 1, 2010, and July 14, 2011.<sup>39</sup> Complainants further  
13 allege that Newt 2012 failed to disclose its \$42,000 payment to Newt Gingrich for the mailing  
14 list on its July 15, 2011 Quarterly Report, and cite to a press report purporting to show that the  
15 committee failed to disclose the payment properly.<sup>40</sup>

16  
17 Respondents submitted a sworn declaration from the chief operating officer of Gingrich  
18 Productions denying that Gingrich Productions had owned or sold the list.<sup>41</sup> Respondents  
19 explain that Newt Gingrich did not disclose the mailing list on his public financial disclosure  
20 report because that report required the disclosure only of assets held for investment or to produce  
21 income, or that had generated more than \$200 during the reporting period. Respondents further  
22 assert that Newt Gingrich did not hold the list for either investment or income, and had not yet  
23 received any payment from Newt 2012 when the report was filed.<sup>42</sup> In short, Respondents  
24 contend that Newt Gingrich did not disclose the list as an asset on his public financial disclosure  
25 report for the simple reason that the list did not meet the criteria for disclosure, not because he  
26 did not own the list.

27  
28 Finally, Respondents explain that Newt 2012 did, in fact, report Newt 2012's purchase of  
29 the list from Newt Gingrich. The committee disclosed the purchase of the list as a \$47,005 debt  
30 owed to Newt Gingrich on its July 15 Quarterly Report and amended October 15 Quarterly  
31 Report to the Commission, before payment had been made, and as an expenditure on its Year-  
32 End Report when the debt was paid.<sup>43</sup>

33  
34 The Complaint's speculative allegation that Gingrich Productions was the true owner of  
35 the mailing list in question — based, as it is, solely on a negative inference from Newt

<sup>39</sup> MUR 6518 (Newt Gingrich, et al.), Compl. ¶¶ 19-21.

<sup>40</sup> *Id.* at ¶ 20 (citing Compl., Ex. 9, Eggen Article).

<sup>41</sup> MUR 6518 (Newt Gingrich, et al.), Resp., Ex. 9, Melvin Declaration ¶ 11.

<sup>42</sup> MUR 6518 (Newt Gingrich, et al.), Resp. at 24.

<sup>43</sup> *Id.* at 29-30.

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1 Gingrich's financial disclosure report — is refuted by the available evidence. These include the  
2 instructions on the face of Newt Gingrich's public financial disclosure report,<sup>44</sup> requiring the  
3 disclosure only of "each asset held for investment or the production of income . . . or which  
4 generated more than \$200 in income during the reporting period," and a declaration from the  
5 chief operating officer of Gingrich Productions, stating that Gingrich Productions never "sold,  
6 attempted to sell, or negotiated to sell" a contact list to Newt 2012.<sup>45</sup> Thus, there is no reason to  
7 believe anyone other than Newt Gingrich owned the list in question.  
8

9 Further, Newt 2012's subsequent disclosure reports indicate that it did in fact report the  
10 purchase of the list both as a debt owed, and as a disbursement made, to Newt Gingrich.<sup>46</sup>  
11 Although the committee "inadvertently omitted" its debt obligation from its original October  
12 2012 Quarterly Report, it previously disclosed the debt on its July 2012 Quarterly Report and  
13 amended its October Quarterly report shortly thereafter to disclose this debt.<sup>47</sup> Thus, any injury  
14 to the Public's informational interest was both minimal and fleeting.<sup>48</sup>  
15

16 **B. Supplemental Information Does Not Support Reason to Believe That**  
17 **Respondents Violated Act**  
18

19 We address separately the information Newt 2012 and Gingrich Productions provided  
20 upon OGC's request for additional information. OGC's past practice of requesting respondents  
21 to provide additional information before the Commission finds reason to believe implicates  
22 important statutory and due process concerns. Furthermore, as happened here, recommending a  
23 reason to believe finding based on information outside the Complaint presents legal and practical  
24 problems for the Commission and respondents.<sup>49</sup> The Commission could in its discretion

<sup>44</sup> MUR 6518 (Newt Gingrich, *et al.*), Compl., Ex. 8, Gingrich Financial Disclosure Rpt.

<sup>45</sup> MUR 6518 (Newt Gingrich, *et al.*), Resp., Ex. 9, Melvin Declaration ¶ 11.

<sup>46</sup> MUR 6518 (Newt Gingrich, *et al.*), Compl., Ex. 1, Newt 2012 Rpt. of Receipts and Disbursements, July 15 Quarterly Rpt. at 689; MUR 6518 (Newt Gingrich, *et al.*), Resp., Ex. 11, Newt 2012 Amended Rpt. of Receipts and Disbursements, October 15 Quarterly Rpt., Schedule D-P at 577; MUR 6518 (Newt Gingrich, *et al.*), Resp., Ex. 10, Newt 2012 Rpt. of Receipts and Disbursements, Year-End Rpt. at 4954.

<sup>47</sup> MUR 6518 (Newt Gingrich, *et al.*), Resp. at 30 n.9; *see also id.*, Ex. 11, Newt 2012 Amended Rpt. of Receipts and Disbursements, October 15 Quarterly Rpt., Schedule D-P.

<sup>48</sup> That said, there was a discrepancy in the purpose description of the debt. It appears as "direct mail list/travel" in Newt 2012's July 15 Quarterly Report and as "travel" in its amended October 15 Quarterly Report. But when Newt 2012 paid the debt, its Year-End Report described the purpose of its disbursement as "list purchase." To ensure the accuracy of the public record and address this minor discrepancy, we voted to refer this issue to the Alternative Dispute Resolution Office ("ADRO"). *See* Amended Certification dated June 16, 2012. The Commission subsequently accepted an agreement negotiated with Newt 2012 that required it to clarify the discrepancy. *See* ADR 772, Certification (Feb. 23, 2016).

<sup>49</sup> The Act authorizes investigations only after four or more Commissioners find there is reason to believe a violation occurred based upon the information presented in a complaint and response or upon information ascertained in the normal course of the Commission's responsibilities. 52 U.S.C. § 30109. For the Act's reason to

1 dismiss a matter where it believes the statutory requirements or fundamental fairness have not  
2 been observed. But here, even were we to take that information into account, we are not  
3 persuaded that there is reason to believe Respondents violated the Act and Commission  
4 regulations, or that any such potential violation would justify an investigation.

5  
6 **1. Corporate Contributions**  
7

8 OGC recommends that the Commission find reason to believe that Respondents violated  
9 the Act's prohibitions on corporate contributions because:

- 10  
11 • Two Gingrich Productions employees were each listed as an "all day trip leader" for  
12 Callista Gingrich on a day that she was scheduled to engage in both Gingrich Productions  
13 events and Newt 2012 events;<sup>50</sup>
- 14 • A Gingrich Productions employee submitted two reimbursement forms to Gingrich  
15 Productions for travel costs, one for the month in which she served as "all day trip  
16 leader" that included travel expenses, and a second for a different time period that  
17 identified several expenses as "campaign";<sup>51</sup> and
- 18 • Newt 2012 reported making several small "salary" disbursements to two Gingrich  
19 Productions employees.<sup>52</sup>

20 OGC surmises from these facts that Gingrich Productions provided something of value to  
21 Newt 2012. This conclusion relies heavily on speculation, because OGC has not identified any  
22 benefits or services that Gingrich Productions provided to Newt 2012. OGC assumes, for  
23 example, that Gingrich Productions provided a service to Newt 2012 because two Gingrich  
24 Productions employees were scheduled to serve as Callista Gingrich's "all day trip leader[s]" on  
25 days that she was scheduled to engage in both Gingrich Productions and Newt 2012 activities.

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*al.*), Statement of Vice Chairman Donald F. McGahn and Commissioner Caroline C. Hunter at 16 (excluding from analysis news articles discovered by OGC because articles "were not properly before the Commission"); MUR 6396 (Crossroads Grassroots Policy Strategies), Statement of Chairman Lee E. Goodman and Commissioners Caroline C. Hunter and Matthew S. Petersen at 26, n.112 (questioning OGC's "broad investigation into Crossroads GPS's activities prior to the Commission making a formal reason to believe finding") (citation and internal punctuation omitted).

<sup>50</sup> MUR 6518 (Newt Gingrich, *et al.*), First General Counsel's Rpt. at 9, 11 (citing MUR 6518 (Newt Gingrich, *et al.*), Supplemental Resp., Ex. 4 (Schedule for December 3, 2011)); *id.* at 8, 10-11 (citing MUR 6518 (Newt Gingrich, *et al.*), Supplemental Resp., Ex. 2 (Schedule for October 5, 2011)).

<sup>51</sup> *Id.* at 9 (citing MUR 6518 (Newt Gingrich, *et al.*), Supplemental Resp., Ex. 6 (Gingrich Group, LLC Expense Reimbursement Form submitted by Anna Haberlein for December 2011)); *id.* at 11 (citing MUR 6518 (Newt Gingrich, *et al.*), Supplemental Resp., Ex. 5 (Gingrich Group, LLC Expense Reimbursement Form submitted by Anna Haberlein for October 2011)).

<sup>52</sup> *Id.* at 8, n.4. OGC also notes that one Gingrich Productions employee listed Newt 2012 as her employer on her LinkedIn profile. *Id.* OGC had no authorization to research the employee's LinkedIn profile, provided no notice of this information to Respondents, and did not give Respondents an opportunity to respond to this information.





1 as pernicious the idea that a candidate's personal scheduler might be involved in scheduling  
2 events with a private corporation. Yet, there is no indication in the record that such activities are  
3 incompatible with a legitimate campaign role. The candidate is only one person and can be in  
4 only one place at any given time. To ensure that the candidate can be at each campaign event, a  
5 scheduler must be aware of and involved in the logistical arrangements for all events involving  
6 the candidate. These duties are not irrespective of the scheduler's role managing the candidate's  
7 schedule; rather, they are an integral and necessary part of it.  
8

9 Similarly, merely stating that a Newt 2012 employee was an "all day trip leader" on a trip  
10 that included Gingrich Productions events, or observing that some Newt 2012 employees were  
11 assigned to Gingrich Productions events, does not show that those activities were irrespective of  
12 Newt Gingrich's campaign. If some Newt 2012 representatives attended Gingrich Productions  
13 events to collect email addresses for future use by the campaign, that would make their presence  
14 at the events directly related to the campaign, and not irrespective of it. Nor does the presence of  
15 a Gingrich Productions employee on a chartered flight with Newt and Callista Gingrich and a  
16 Newt 2012 employee necessarily mean that campaign assets were used to benefit Gingrich  
17 Productions, absent any indication that Gingrich Productions failed to reimburse Newt 2012 for  
18 the airfare.  
19

20 By making these inferences, OGC shifts the burden of proof onto Respondents to prove  
21 that they did not violate the Act. This is not what the Act requires. The evidence gathered by  
22 OGC yields conclusions too speculative to justify the highly intensive investigation that would  
23 be necessary to verify that no employee of either Gingrich Productions or Newt 2012 performed  
24 any services for the other. That would not be an efficient use of Commission resources,  
25 particularly in light of the unclear nature and significance of the violation.  
26

27 ***b. Newt 2012 Website***  
28

29 We find OGC's recommendations on the website issue particularly troubling, because  
30 personal use of the campaign's website was not alleged in the Complaint. The Complaint  
31 contained four specific allegations, none of which involved the use of the website. But seizing  
32 on references to Newt 2012's website in news articles attached to the Complaint, OGC made  
33 them a springboard for soliciting additional information from Respondents.<sup>60</sup> After receiving  
34 Respondents' explanation that they had modeled their use of the website on conduct approved by  
35 the Commission in Advisory Opinion 2011-02 (Brown),<sup>61</sup> OGC advanced its pre-RTB  
36 investigation. OGC determined that links to various pages of the Gingrich Productions website

<sup>60</sup> MUR 6518 (Newt Gingrich, *et al.*), OGC Letter at 2 ("invit[ing] [Respondents'] attention to references in the materials attached to the Complaint to portions of the Newt 2012 website that promote book signings and provide links to Gingrich Productions's website").

<sup>61</sup> See MUR 6518 (Newt Gingrich, *et al.*), Supplemental Resp. at 7 (stating that information posted on Newt 2012's webpages relating to Gingrich Productions's products was "much less 'personal' and 'promotional' in nature than those blessed by the Commission with regards to Senator Brown's campaign" and "would not have occurred irrespective of Speaker Gingrich's campaign").

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1 accounted for approximately 10% of the total links on Newt 2012's website, and that "Gingrich  
2 Productions-related posts" accounted for more than 40% of the total content of "Callista's  
3 Canvas," a blog maintained on the website by the candidate's spouse. In support of its reason to  
4 believe recommendation, OGC presented the Commission with hundreds of pages of web  
5 printouts without having notified Respondents that the materials were under consideration, much  
6 less giving Respondents an opportunity to respond to the allegation, as the Act and the  
7 Commission's regulations require in complaint-generated matters.<sup>62</sup>

8  
9 As for the merits of the allegation, we do not believe that the references on Newt 2012's  
10 website to Gingrich Productions's products, website, and events constitute personal use. The  
11 Commission has previously concluded that candidates may post a *de minimis* amount of material  
12 promoting their books on their campaign websites at *de minimis* cost without violating the  
13 personal use restriction, and OGC has not shown that the use of Newt 2012's website at issue  
14 here was more than *de minimis* or was irrespective of the campaign.<sup>63</sup> Even by OGC's own  
15 count, links to Gingrich Productions's products are minimal relative to the Newt 2012 website as  
16 a whole, constituting only about 10% of all links, which themselves constitute only a small  
17 fraction of the information on the website. Moreover, although the 40% figure cited by OGC is  
18 larger on its face, it relates only to the "Callista's Canvas" blog posting. Callista's Canvas is  
19 only one feature on the campaign's website; the actual percentage of the website containing these  
20 references would be much smaller. Nor do the references in the Callista's Canvas blog posts ask  
21 website readers "to purchase products from or take any other action with regard to Gingrich  
22 Productions."<sup>64</sup> Rather, they provide an avenue for visitors to learn more about the outside  
23 activities of the candidate and his spouse, and an opportunity to interact with the candidate  
24 beyond campaign events. Further, the webpages culled by OGC show that Callista Gingrich's  
25 activities with respect to a children's book that she authored were intended to show her  
26 suitability as a potential First Lady.<sup>65</sup> This use of a candidate's website to post information about  
27 a candidate's spouse, including her activities outside of the campaign, and about the candidate's  
28 schedule, is not irrespective of the candidate's campaign for federal office.<sup>66</sup> Instead, these

<sup>62</sup> MUR 6518 (Newt Gingrich, *et al.*), First General Counsel's Rpt. at 15.

<sup>63</sup> See, e.g. Advisory Opinion 2014-06 (Ryan) at 7; Advisory Opinion 2011-02 (Brown) at 6-7; Advisory Opinion 2006-07 (Hayworth) at 3.

<sup>64</sup> MUR 6518 (Newt Gingrich, *et al.*), Supplemental Resp. at 9. OGC rejects this argument as "unavailing," in part because some Newt 2012 web pages include links to other web pages that "urge the purchase of Gingrich Productions products." MUR 6518 (Newt Gingrich, *et al.*), First General Counsel's Rpt. at 17. Here, OGC is imputing to Respondents what a third party posted on its own website, rather than reviewing the postings on Newt 2012's website on their own merits.

<sup>65</sup> See Callista's Canvas, A Conversation With Callista Gingrich (Nov. 16, 2011) ("[I]f I were fortunate enough to become First Lady, I would . . . reinforce the importance of learning American history so our children can understand that we are an exceptional nation. . . . American history is so important. It encourages our patriotism, teaches us the key elements of being American, and helps us better understand who we are. I recently wrote a book for 4-8 year olds, entitled, *Sweet Land of Liberty*. . . . My goal is to highlight the wonderful achievements of our country, to arouse a love for America, and to communicate why America is indeed a special nation.")

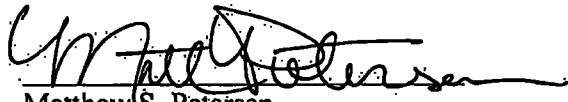
<sup>66</sup> MUR 6518 (Newt Gingrich, *et al.*), Supplemental Resp. at 8.

1 activities are consistent with the candidate's obligation to introduce himself, his family, and their  
2 world view to voters — activities which would not exist irrespective of the candidacy.  
3 Accordingly, under these circumstances, the references and links on Newt 2012's website to  
4 Gingrich Productions's products, websites, and events do not constitute personal use in violation  
5 of the Act and Commission regulations. Even if they did confer some personal benefit, the value  
6 of including such links and connections to the campaign was likely *de minimis* and would not  
7 justify the costs and burdens to the Commission and the respondents of further enforcement.  
8

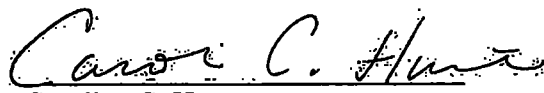
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**III. Conclusion**

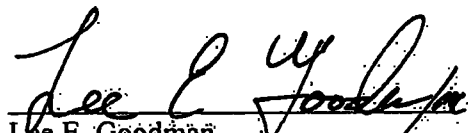
In light of the foregoing factual, legal, and policy considerations, we did not support OGC's recommendation that the Commission find reason to believe that Respondents violated the Act and Commission regulations in this matter.

  
Matthew S. Petersen  
Chairman

6/1/2016  
Date

  
Caroline C. Hunter  
Commissioner

6/2/2016  
Date

  
Lee E. Goodman  
Commissioner

6/2/2016  
Date

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