



1     **I.     INTRODUCTION**

2             The Complaint alleges that Liberty Principles PAC, Inc., a federal independent-  
3 expenditure-only political committee, and Dan Proft in his official capacity as treasurer ("Liberty  
4 Federal PAC"), violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by  
5 making in-kind contributions to Khouri for Congress and Paul Kilgore in his official capacity as  
6 treasurer (the "Khouri Committee") in the form of coordinated communications that republished  
7 Khouri Committee campaign materials in a format designed to look like local community  
8 newspapers. The Complaint attaches copies of news articles dated August 2016 that were  
9 excerpted from the *DuPage Policy Journal* as examples of the alleged republication. The  
10 Complaint further alleges that the Khouri Committee accepted and failed to report these in-kind  
11 contributions in violation of the Act.

12             Respondent Local Government Information Services, Inc. ("LGIS"), an Illinois  
13 corporation partially owned by Proft, claims responsibility for production and distribution of the  
14 publications that featured the Khouri articles and asserts that its publication of these materials is  
15 protected by the press exemption. LGIS contracts with various entities, including Locality Labs,  
16 Inc., LLC ("LocalLabs"), to prepare content for the publications. Liberty Federal PAC, in turn,  
17 denies any responsibility for the publications at issue in these matters; however, its disclosure  
18 reports show that 99% of its disbursements went to an affiliated state political committee,  
19 Liberty Principles PAC, Inc. State Account ("Liberty State PAC"), also run by Proft, which then  
20 reported making large disbursements to Newsinator LLC, an entity that appears to be closely  
21 related to both LGIS and LocalLabs.

22             Whether LGIS is, in fact, covered by the press exemption is complicated by Liberty  
23 Federal PAC's apparent indirect funding of the publications and Proft's dual role as treasurer of

1 Liberty Federal PAC and as an owner of LGIS. We conclude, however, that it is unnecessary for  
2 the Commission to make a determination on the application of the press exemption here,  
3 because, even if the exemption did not apply, the record contains insufficient information to give  
4 rise to a reasonable inference that LGIS, LocalLabs, or Liberty Federal PAC coordinated the  
5 content of its publications with the Khouri Committee. Accordingly, we recommend that the  
6 Commission dismiss the coordination allegation. Additionally, as discussed further below, given  
7 the overall context and the apparently modest cost of the specific Khouri-related articles at issue,  
8 we conclude that the remaining portion of the matter does not warrant the use of additional  
9 Commission resources. Therefore, we recommend that the Commission exercise its  
10 prosecutorial discretion to dismiss the republication allegation and close the file.<sup>1</sup>

## 11 II. FACTUAL SUMMARY

### 12 A. Background

13 Tonia Khouri was a 2016 candidate for the U.S. House of Representatives in Illinois'  
14 Eleventh congressional district.<sup>2</sup> Khouri for Congress is her principal campaign committee.<sup>3</sup>  
15 Paul Kilgore is the committee's treasurer.<sup>4</sup>

16 Dan Proft is a radio talk show host in Chicago, Illinois; he is also a political  
17 commentator, entrepreneur and activist, and runs several organizations.<sup>5</sup> Proft is the co-owner of

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<sup>1</sup> See *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

<sup>2</sup> Khouri lost the 2016 general election. See *Federal Elections 2016: Election Results for the U.S. President, the U.S. Senate, and the U.S. House of Representatives* at 116, available at <https://transition.fec.gov/general/FederalElections2016.shtml>.

<sup>3</sup> Tonia Khouri, FEC Form 2, *Statement of Candidacy* (Apr. 9, 2015).

<sup>4</sup> Khouri for Congress, FEC Form 1, *Statement of Organization* (Apr. 9, 2015).

<sup>5</sup> See *About Dan Proft*, MORNING ANSWER CHICAGO, <http://morninganswerchicago.com/about-dan-proft/> (last visited May 31, 2019); *About Dan Proft*, Upstream Ideas, <http://upstream-ideas.com/about-dan-proft> (last visited Mar. 31, 2019). Proft was also a former candidate for Governor of Illinois. *Candidate Detail*, Ill. State Bd.

1 LGIS, the publisher of various local community newspapers in the State of Illinois.<sup>6</sup> Proft is also  
2 the treasurer of federal independent-expenditure-only political committee Liberty Principles  
3 PAC, Inc., as well as a similarly named state committee, Liberty Principles PAC, Inc. State  
4 Account, which Proft describes as “one of Illinois’ largest Independent Expenditure PACs.”<sup>7</sup>  
5 Additionally, Proft is a co-founder of a 501(c)(4) known as “The Illinois Opportunity Project,”  
6 “which advocates for free market public policy solutions.”<sup>8</sup> According to the Complaint, Proft  
7 raised money for Khouri’s 2016 candidacy and attended campaign events.<sup>9</sup>

8 Proft describes LGIS as “a for-profit media corporation incorporated in the State of  
9 Illinois on August 15, 2016 and as a continuing news organization” engaged in the “production  
10 and distribution of local and state news.”<sup>10</sup> LGIS distributes both online content and print  
11 newspapers. LGIS’s website lists 20 digital and 11 print news editions covering different areas

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of Elections,  
<https://www.elections.il.gov/CampaignDisclosure/CandidateDetail.aspx?ID=%2b41a1MRZw9IXmWg5HV9wmg%3d%3d>.

<sup>6</sup> LGIS Resp. (Nov. 17, 2016), Decl. D. Proft ¶ 1. The pleadings do not include names of the other owners of LGIS. However, as discussed below, at least one press article identifies Brian Timpone, the owner of Newsinator, LLC and LocalLabs, as Proft’s partner in LGIS. See Joe Mahr, *Conservative Illinois Publications Blur Lines Between Journalism, Politics* (Apr. 6, 2018), CHICAGO TRIBUNE, <https://www.chicagotribune.com/news/ct-met-illinois-conservative-news-20180327-story.html>.

<sup>7</sup> See <https://illinoisopportunity.org/the-project/#Dan%20Proft>; <http://upstream-ideas.com/about-dan-proft>.

<sup>8</sup> <https://illinoisopportunity.org/the-project/#Dan%20Proft>.

<sup>9</sup> Compl. at 7-8.

<sup>10</sup> Decl. D. Proft ¶ 3. The Response states that LGIS is a for-profit corporation, but does not specify how it generates revenue. The publications’ websites feature advertisements and offer subscriptions for \$54.99 annually, though it appears from the Responses that the print editions were also sent to readers who did not request a subscription, as well as left in high traffic areas for free. See <https://dupagepolicyjournal.com/subscription> (last visited Mar. 7, 2019). Additionally, the newspapers’ current websites state that they receive funding “by advocacy groups who share our beliefs in limited government.” See <http://dupagepolicyjournal.com/about-us> (last visited May 31, 2019).

1 of Illinois, including the *DuPage Policy Journal*.<sup>11</sup> LGIS was an active corporation during the  
2 2016 election cycle, but has been in “dissolved” status since January 11, 2019.<sup>12</sup>

3 LGIS contracts with Locality Labs, a limited liability corporation that has been registered  
4 in Illinois since November 10, 2008, and is also known as LocalLabs.<sup>13</sup> LocalLabs provides  
5 local and state news content for publication by LGIS.<sup>14</sup> Brian Timpone is the founder and CEO  
6 of LocalLabs.<sup>15</sup> Timpone has also been reported as the owner of Newsinator, LLC, another  
7 entity that distributed the same community newspapers at issue in this matter before LGIS  
8 incorporated in 2016 and took over production and distribution of the newspapers.<sup>16</sup> According  
9 to news reports, Liberty State PAC’s counsel has publicly acknowledged that the committee

<sup>11</sup> The LGIS website lists the following digital and print publications: Carbondale Reporter, Chambana Sun, Chicago City Wire, DuPage Policy Journal, DeKalb times, East Central Reporter, Galesburg Reporter, Grundy Reporter, Illinois Valley Times, Kane County Reporter, Kankakee Times, Kendall County Times, Lake County Gazette, Macon Reporter, McHenry Times, McClean County Times, Metro East Sun, North Cook News, North Egypt News, NW Illinois News, Peoria Standard, Prairie State Wire, Quincy Reporter, Rock Island Today, Rockford Sun, Sangamon Sun, SE Illinois News, South Central Report, South Cook News, Southern Illinois News, SW Illinois, West Central Reporter, West Cook News, Will County Gazette. See [https://lgis.co/our\\_publications](https://lgis.co/our_publications) (last accessed May 31, 2019).

<sup>12</sup> See *Corp/LLC Search*, Office of the Ill. Sec. of State, <https://www.ilsos.gov/corporatellc/CorporateLlcController>.

<sup>13</sup> LocalLabs Resp. (Nov. 17, 2016), Decl. B. Timpone ¶ 1. As of this date, LocalLabs remains on active status with the Illinois Secretary of State, but its website is no longer operating. See <https://www.ilsos.gov/corporatellc/CorporateLlcController> and <https://locallabs.com/>. It appears that the company website was last active on or about November 2, 2017. See <https://web.archive.org/web/20171102104213/http://www.locallabs.com/>.

<sup>14</sup> LocalLabs Resp., Decl. B. Timpone ¶¶ 7-8.

<sup>15</sup> *Id.* ¶ 1.

<sup>16</sup> Timpone was Newsinator’s registered agent until 2014, but is now listed as an “LLC Manager.” The company remains in active status. See <https://www.ilsos.gov/corporatellc/CorporateLlcController>.

It appears the publications were produced prior to LGIS’s incorporation in August 2016 by different entities. See, e.g., *Apr. 11, 2015 Snapshot*, DUPAGE POLICY JOURNAL, <https://web.archive.org/web/20150411163645/https://dupagepolicyjournal.com/> (displaying a 2014 copyright date). Coverage regarding the local community newspapers began as early as February 2016. See Mike Riopell, *Newspaper Run by Dan Profit’s PAC hits Lake County*, DAILY HERALD (Feb. 19, 2016), available at <http://www.dailyherald.com/article/20160218/news/160218834/>.

1 contracted with Newsinator to “interview elected officials or candidates and write  
2 newspapers.”<sup>17</sup> Press reports further indicate that Timpone and Proft later “team[ed] up” to start  
3 LGIS to operate the same websites and publications previously operated by Newsinator.<sup>18</sup>  
4 Timpone’s declaration submitted with the LGIS and LocalLabs Responses to the Complaint,  
5 however, does not mention Newsinator or state whether he played any role with LGIS.

6 The websites for the individual LGIS publications, including the *DuPage Policy Journal*,  
7 currently state that they are “a product of LGIS – Local Government Information System” and  
8 that they are funded “in part, by advocacy groups who share our beliefs in limited  
9 government.”<sup>19</sup> Before the fall of 2016, most of the websites for these same publications did not  
10 make any reference to LGIS but rather stated that “[a] print version of this paper is currently  
11 being funded by Liberty Principles PAC” and that the publication was “a product of Locality  
12 Labs, Inc.”<sup>20</sup>

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<sup>17</sup> Jarad Jarmon, *Complaints Filed Against PAC Backing Phillips* (Mar. 10, 2016), JOURNAL GAZETTE & TIMES-COURIER, [https://jg-tc.com/news/complaints-filed-against-pac-backing-phillips/article\\_ab22c0dd-fdda-5f16-af1f-2768470182c3.html](https://jg-tc.com/news/complaints-filed-against-pac-backing-phillips/article_ab22c0dd-fdda-5f16-af1f-2768470182c3.html) (attributing statements to Christine Svenson, Liberty State PAC’s counsel). In February of 2016, Proft stated that Newsinator was responsible for the publications at issue in this matter. See Jackie Spinner, *An Illinois PAC Decides to Get Into Local News — Just In Time for the Primary*, COLUMBIA JOURNALISM REVIEW (Mar. 15, 2016), available at [http://www.cjr.org/united states project/illinois pac newspapers.php](http://www.cjr.org/united_states_project/illinois_pac_newspapers.php). Newsinator, LLC is not a Respondent in this matter.

<sup>18</sup> See Mahr, *supra* note 6.

<sup>19</sup> See, e.g., <https://dupagepolicyjournal.com/about-us>.

<sup>20</sup> See, e.g., Mar. 2, 2016 Snapshot, *About Us*, MCHENRY TIMES, <https://web.archive.org/web/20160302153436/http://mchenrytimes.com/about-us> (stating print version was funded by Liberty Principles PAC and that the publication was a product of Locality Labs, Inc); May 2, 2016 Snapshot, *About Us*, EAST CENTRAL REPORTER, <https://web.archive.org/web/20160502213642/https://eastcentralreporter.com/about-us> (stating print version was funded by Liberty Principles PAC and that the publication was a product of Locality Labs, Inc); Aug. 30, 2016 Snapshot, *About us*, DUPAGE POLICY JOURNAL, <http://web.archive.org/web/20160830112531/https://dupagepolicyjournal.com/about-us> (stating that funding was provided by “advocacy groups who share our beliefs in limited government” and that it was a product of Locality Labs, Inc). Based on a review of the various websites, it does not appear that any of them ever listed Newsinator.

1 Liberty Federal PAC, an independent-expenditure-only political committee, registered  
2 with the Commission on March 1, 2012, and has filed quarterly reports since that time.<sup>21</sup> As  
3 previously noted, Proft serves as its treasurer. Liberty Federal PAC has never reported making a  
4 federal independent expenditure. Its disclosure records suggest that it primarily supports its  
5 aforementioned similarly-named state independent-expenditure-only committee, Liberty  
6 Principles PAC, Inc. State Account.<sup>22</sup> In the 2016 election cycle, Liberty Federal PAC reported  
7 only one disbursement: a \$15,000 disbursement to Liberty State PAC.<sup>23</sup> Additionally, in 2014,  
8 Liberty Federal PAC reported making \$1,802,410.15 in total disbursements, \$1.8 million of  
9 which went to the Liberty State PAC.<sup>24</sup> In 2016, Liberty Federal PAC reported no receipts,  
10 while in 2014 it reported receiving \$1.78 million in contributions, of which all but \$2,000 came  
11 from one donor.<sup>25</sup>

12 Liberty State PAC registered as an independent-expenditure-only political committee  
13 with Illinois on October 9, 2012. Proft also serves as that committee's chairman and treasurer.<sup>26</sup>

<sup>21</sup> See Liberty Principles PAC, Inc., FEC Form 1, *Statement of Organization* (Feb. 28, 2012).

<sup>22</sup> See Liberty Principles PAC, Inc., FEC filings at <https://www.fec.gov/data/committee/C00514299/?tab=filings>.

<sup>23</sup> See Liberty Principles PAC, Inc., 2016 30-Day Post-Election Report at 6 (Dec. 6, 2016).

<sup>24</sup> See Liberty Principles PAC, Inc., 2014 April Quarterly Report at 7 (Apr. 15, 2014).

<sup>25</sup> That donor, Richard Uihlein, also contributed \$125,000 to Liberty Federal PAC in 2012. During that cycle, the PAC raised a total of \$278,200. See Liberty Principles PAC, Inc., FEC filings at <https://www.fec.gov/data/committee/C00514299/?tab=raising&cycle=2012>.

<sup>26</sup> See Liberty Principles PAC, Form D-1, *Statement of Organization*, (Ill. State Bd. of Elections) (Oct. 11, 2012), <https://www.elections.il.gov/CampaignDisclosure/CommitteeDetail.aspx?id=ITGV5m%2bSOpFSApzT5ynUMO%3d%3d&pageindex=lir0i4Uzc3E%3d>. According to Liberty State PAC's disclosure reports, in 2016 it received over \$325,000 in loans from Proft's non-profit, the Illinois Opportunity Project, and a \$125,000 loan from "Proft for Governor," Proft's former state campaign committee. See Liberty Principles PAC, Ill. State Bd. of Elections filings at <https://www.elections.il.gov/campaigndisclosure/committeesearch.aspx>; <https://illinoisopportunity.org/the-project/#Dan%20Proft>.

1 Liberty State PAC has reported significant independent expenditures in support of or opposition  
2 to Illinois state candidates in recent years. In 2016, for example, it reported making  
3 approximately \$9.9 million in state independent expenditures.<sup>27</sup> Additionally, based on amended  
4 reports filed in 2019, Liberty State PAC reported making \$329,082 in independent expenditures  
5 that were paid to Newsinator, LLC between February 1, 2016 and October 19, 2016, for  
6 “advertising – newspaper” in support of state candidates.<sup>28</sup> The State PAC has not reported any  
7 federal activity or any payments to LGIS or LocalLabs.

8 Illinois State Board of Elections records show that three complaints were filed against  
9 Liberty State PAC in 2016 alleging that the committee failed to include “proper attribution of  
10 source in political communications” and that it coordinated electioneering communications with  
11 candidates.”<sup>29</sup> The state board of elections found that the complaints were “filed on justifiable  
12 grounds” and admonished Liberty State PAC “to ensure that all future political literature and  
13 communications identify the PAC as payor,” that it include “a proper attribution of source on all  
14 future materials,” and noted that a future violation would subject that PAC to penalties.<sup>30</sup>  
15 Attorney Christine Svenson, who represented Liberty State PAC before the state board of  
16 elections, is also the registered agent for LGIS.<sup>31</sup>

<sup>27</sup> See Liberty Principles PAC, 2016 Quarterly Reports (Ill. State Bd. of Elections), available at <https://www.elections.il.gov/campaigndisclosure/committeesearch.aspx>.

<sup>28</sup> See Liberty Principles PAC Amended Quarterly Reports covering Jan. 1, 2016 through March 31, 2016, and October 1, 2016 through December 31, 2016 (filed Jan. 15, 2019) (Ill. State Bd. of Elections).

<sup>29</sup> <https://www.elections.il.gov/CampaignDisclosure/ComplaintSearch.aspx>.

<sup>30</sup> *Id.*; see also Regular Meeting Minutes (Mar. 14, 2016), Ill. State Bd. of Elections, [https://www.elections.il.gov/downloads/abouttheboard/pdf/03\\_14\\_16minutes.pdf](https://www.elections.il.gov/downloads/abouttheboard/pdf/03_14_16minutes.pdf).

<sup>31</sup> Mahr, *supra* note 6 (citing Svenson as the PAC's counsel); Regular Meeting Minutes for June 19, 2018, Ill. State Bd. of Elections, <https://www.elections.il.gov/downloads/abouttheboard/pdf/june%202019-18%20regular%20meeting%20minutes.pdf> (noting Svenson appearing on behalf of Liberty State PAC with regard to an appeal); Corporate/LLC Search, Office of the Ill. Sec. of State,



1           **B. The 2016 Publications**

2           Relying on publicly-available news reports, the Complaint alleges that in 2016 Liberty  
3 Federal PAC distributed publications to Illinois voters in the Eleventh Congressional District in  
4 support of Khouri's congressional campaign.<sup>32</sup> According to the Complaint, Illinois voters  
5 received these printed publications unsolicited and the publications were also made freely  
6 available in high-traffic areas.<sup>33</sup> The Complaint identifies fourteen publications aimed at various  
7 local Illinois communities being distributed in this manner, each of which has a corresponding  
8 website with similar content, design, format, and logo.<sup>34</sup>

9           In support of the allegations, the Complaint attaches two excerpts from one of the  
10 publications, the *DuPage Policy Journal*, that includes quotes from Khouri. The first excerpt is  
11 an article from the August 15, 2016, *DuPage Policy Journal* entitled "Tonja Khouri criticizes  
12 Obama administration for sending \$400 million to Iran," which was included in the  
13 "Government Notes" section of the publication.<sup>35</sup> It begins with one sentence identifying Khouri  
14 as the Republican candidate for Illinois' Eleventh Congressional District and is followed,  
15 without any additional commentary, by a two-paragraph quote originally published on Khouri's  
16 Facebook page. The second article, published on August 14, 2016, in the *DuPage Policy*  
17 *Journal*, is titled "Pondering her children's future prompts Khouri's congressional run" and

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<https://www.ilsos.gov/corporatellc/CorporateLlcController> (last accessed May 31, 2019) (listing Svenson as LGIS's registered agent).

<sup>32</sup> Compl. at 1-2.

<sup>33</sup> *Id.* 1-2, 4.

<sup>34</sup> See *id.* at 2 (identifying Sangamon Sun, Champaign Sun, East Central Reporter, Kankakee Times, Lake County Gazette, McHenry Times, Metro East Sun, North Cook News, Rock Island Today, SW Illinois News, West Central Reporter, and West Cook News).

<sup>35</sup> Compl. Ex. A.

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1 heavily quotes from a “special message to mothers” video originally posted on Khouri’s  
2 Facebook page.<sup>36</sup> That article includes brief commentary interspersed throughout the direct  
3 Facebook quotes, including an overview of the earlier primary election results of Khouri’s race  
4 and biographical information about Khouri. It also includes Khouri’s headshot that matches a  
5 photograph that appeared on her Facebook page.<sup>37</sup>

6 The Complaint alleges that these publications were designed to look like newspapers,  
7 which would fall within the scope of the Commission’s press exemption, but are in reality akin  
8 to campaign mailers. In support, the Complaint alleges that:

- 9 • The publications only recently began distribution, “appearing in voter’s mailboxes  
10 ‘just in time for the primary’ elections in Illinois.”<sup>38</sup>
- 11 • The publications’ coverage of local government news are merely reproductions “of  
12 information already made available to the public, like meeting agendas.”<sup>39</sup>
- 13 • The publications quote directly from Khouri’s website and Facebook page,  
14 republishing and distributing campaign materials to readers.<sup>40</sup>
- 15 • The General Counsel of the Illinois Press Association publicly challenged the  
16 legitimacy of the publishers as press entities.<sup>41</sup>
- 17
- 18
- 19
- 20

<sup>36</sup> An archived version of the message is available, but the video no longer works.  
<https://web.archive.org/web/20160615061642/http://toniakhour.com/a-moms-message/>.

<sup>37</sup> See Compl. at 7 (Oct. 6, 2016); *id.*, Ex. A;  
<https://www.facebook.com/toniakhour/photos/a.290544000982171/866933746676524/?type=3&theater>. The dates  
of these articles are provided by the Complainant, but do not appear on the attached exhibits, and therefore cannot be  
verified. The dates are not disputed by Respondents.

<sup>38</sup> Compl. at 4 (quoting Spinner, *supra* note 17).

<sup>39</sup> *Id.* (quoting Rick Miller, *The “Communications Platform” Stirs Controversy*, CAPITAL FAX (Jul. 25, 2016),  
available at <https://capitolfax.com/2016/07/25/the-communications-platform-stirs-controversy/>).

<sup>40</sup> See Compl. at 7, Ex. A.

<sup>41</sup> Compl. at 4 (quoting Tom Collins, *It Looks Like a Newspaper, But it Isn't*, NEWS TRIBUNE (Jul. 23, 2016),  
available at [http://www.newstrib.com/news/local\\_news/it-looks-like-a-newspaper-but-it-isn-t/article\\_612fdbcc-e4a4-57ca-a070-217b831ae110.html](http://www.newstrib.com/news/local_news/it-looks-like-a-newspaper-but-it-isn-t/article_612fdbcc-e4a4-57ca-a070-217b831ae110.html)).

- 1 • The publications do not include a mailing address or phone number, and give  
2 ““readers no information about who runs it’ other than an email address and Twitter  
3 account.”<sup>42</sup>  
4
- 5 • Recipients of the publications received copies without subscribing, and copies were  
6 left in high traffic areas for free.<sup>43</sup>  
7
- 8 • Recipients of the publications have filed complaints with the Illinois State Board of  
9 Elections, “asking for an investigation into these ‘faux newspapers.’ ”<sup>44</sup>  
10
- 11 • The publications are controlled by a federal political committee, Liberty Principles  
12 PAC, and the PAC’s treasurer, Proft, has publicly taken credit for distributing these  
13 publications, that he says are “designed to cover issues ignored by other media and  
14 also to influence policy and elections.”<sup>45</sup>  
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16 The Complaint further alleges that certain material contained in these publications  
17 constitute coordinated communications with the Khouri committee because they were paid for by  
18 Liberty Federal PAC, contained republications of Khouri campaign materials, and identified a  
19 congressional candidate within 90 days of an election.<sup>46</sup> Additionally, the Complaint alleges that  
20 Proft’s involvement with fundraising for Khouri’s campaign, attendance at her campaign events,  
21 and his role in hosting events with the candidate were also proof of coordination.<sup>47</sup> The  
22 Complaint contends that the publications therefore should have been reported as in-kind  
23 contributions by the Khouri Committee and Liberty Federal PAC.

24 Liberty Federal PAC’s Response denies that it paid for the publications. In a sworn  
25 declaration attached to the Response, Proft avers that “Liberty Principles PAC, Inc. did not

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<sup>42</sup> *Id.* (quoting Miller, *supra* note 39).

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* (quoting Collins; *supra* note 41).

<sup>45</sup> *Id.* at 6 (quoting Spinner, *supra* note 17)

<sup>46</sup> *Id.* at 6-7

<sup>47</sup> *Id.* at 7-8.

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1 distribute nor pay for the production or distribution of any of the publications at issue in [the  
2 Complaint], including publications regarding Tonia Khouri's congressional campaign," and that  
3 "[t]he federal account of Liberty Principles PAC, Inc. has not distributed nor paid for the  
4 production or distribution of any publications relating to the federal 2016 primary or general  
5 election."<sup>48</sup> The Response does not address the reported disbursements that Liberty Federal PAC  
6 made to the Liberty State PAC that may have been used to pay Newsinator for production and  
7 distribution of the publications. Liberty State PAC was not named in the Complaint and is not a  
8 Respondent in this matter.

9 LGIS and LocalLabs submitted separate, but similar, Responses to the Complaint. Each  
10 Response attaches the same declarations from Proft and Timpone.<sup>49</sup> LGIS states that it has  
11 produced the weekly community newspapers, including the *Du Page Policy Journal*, since it  
12 incorporated in August 2016,<sup>50</sup> and that the newspapers are mostly "subscription based," but  
13 have also been mailed to community residents without a request from them and provided for free  
14 in news racks across Illinois.<sup>51</sup> It contends that because it qualifies for the press exemption, it  
15 did not make a contribution or expenditure in connection with a federal election.<sup>52</sup> LGIS states

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<sup>48</sup> Liberty Federal PAC Resp. (Nov. 17, 2016), Decl. of D. Proft ¶¶ 3-4.

<sup>49</sup> LGIS Resp., Decl. of D. Proft and Decl. of B. Timpone; LocalLabs Resp. (Nov. 17, 2017), Decl. of D. Proft and Decl. of B. Timpone.

<sup>50</sup> LGIS Resp. at 2. The local community newspapers, however, were already being produced prior to August 2016. See Riopell, *supra* note 16.

<sup>51</sup> LGIS Resp. at 2-3.

<sup>52</sup> *Id.* at 3-6.

1 that it is not owned by a candidate, committee, or party, and Proft similarly asserts that he did  
2 “not have day-to-day control over which news stories are featured in LGIS newspapers.”<sup>53</sup>

3 LGIS further states that the “community newspapers are on-going publications whose  
4 purpose has nothing to do with the past election,” and points to the “hundreds and sometimes  
5 thousands” of local news stories it publishes in a week, including stories on community events  
6 and sports, unrelated to local politics.<sup>54</sup> A review of the newspaper websites found that the  
7 publications have continued to publish local content on their websites beyond the 2016 election,  
8 but it is unclear whether they continue to print and distribute physical copies.<sup>55</sup>

9 LocalLabs argues that it did not make a contribution or expenditure because it only  
10 provided LGIS with content, and did not publish any of that content itself.<sup>56</sup> The LGIS and  
11 LocalLabs Responses clarify the relationship LGIS had with LocalLabs, a for-profit media  
12 corporation that “fills the void” of original community news.<sup>57</sup> LocalLabs explains that though  
13 LGIS creates some original content, it has also contracted with LocalLabs to provide local and  
14 state news in certain geographical areas in Illinois.<sup>58</sup> LocalLabs editors provide the local content  
15 to LGIS for publishing on LGIS’s websites and in print newspapers, but ultimately, LGIS retains

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<sup>53</sup> *Id.* at 3, Decl. of D. Proft ¶ 1. LGIS further disclaims the Complaint’s allegation that the newspapers do not provide contact information, pointing to email addresses and phone numbers provided on the newspapers’ websites. *Id.* ¶ 5.

<sup>54</sup> *Id.* at 4-5; Ex. A. (examples of published community news).

<sup>55</sup> The Response states that the “format and distribution of the newspaper prior to the federal general election is the same as after the election.” *Id.* at 4, Decl. of D. Proft ¶ 12.

<sup>56</sup> LocalLabs Resp. at 2.

<sup>57</sup> Decl. of B. Timpone ¶¶ 2, 5.

<sup>58</sup> LocalLabs Resp. at 5

1 editorial control of the content produced by LocalLabs.<sup>59</sup> LocalLabs does not state whether it  
2 provided LGIS with the Khouri-related content attached to the Complaint.

3 LocalLabs's Response argues that LocalLabs also falls within the press exemption  
4 because it is a press entity within the meaning of the Act, is not owned or controlled by a  
5 political party, committee, or candidate, and is acting as a press entity when it creates the content  
6 for LGIS's publications.<sup>60</sup> The response further argues that it did not provide any content  
7 containing express advocacy for or against federal candidates, but, even if it had, such conduct  
8 would not render the entity ineligible for the press exemption.<sup>61</sup>

9 Finally, the Khouri Committee states "unequivocally that the communications in question  
10 made by the Liberty Principles PAC were NOT made in cooperation, consultation or concert  
11 with, or at the request or suggestion of, Tonia Khouri, Khouri for [C]ongress, or their agents."<sup>62</sup>

### 12 III. LEGAL ANALYSIS

13 If LGIS or Locality Labs are press entities and were acting within the scope of the press  
14 exemption when they published or distributed the *DuPage Policy Journal* communications, their  
15 activities would not be contributions or expenditures under the Act, and therefore would not be  
16 subject to the limitations and requirements of the Act and implementing regulations.

17 Accordingly, we first examine who published or distributed the Khouri articles and then  
18 determine whether the press exemption applies to that entity. Because the record lacks sufficient  
19 information to determine whether the press exemption applies in this scenario, we also evaluate

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<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 3.

<sup>61</sup> *Id.* at 6.

<sup>62</sup> Khouri Comm. Resp. (Nov. 1, 2016) (emphasis in original).

1 whether the Khouri articles were coordinated communications as alleged by the Complaint. We  
2 conclude that there is insufficient information to give rise to an inference that the publications  
3 featuring the Khouri quotations were coordinated, and therefore recommend that the  
4 Commission dismiss the allegations that LGIS, LocalLabs, or Liberty Federal PAC coordinated  
5 the content of its publications with the Khouri Committee. Finally, we address whether  
6 Respondents made a contribution in the form of republished campaign materials, and  
7 recommend that the Commission dismiss this allegation as a matter of prosecutorial discretion.

8 **A. There is Insufficient Evidence in the Record to Determine Whether the Press**  
9 **Exemption Applies**  
10

11 The Act and Commission regulations exempt from the definition of “contribution” and  
12 “expenditure” “[a]ny cost incurred in covering or carrying a news story, commentary, or editorial  
13 by any broadcasting station . . . unless the facility is owned or controlled by any political party,  
14 political committee, or candidate . . . .”<sup>63</sup> This exclusion is generally referred to as the “press  
15 exemption” or “media exemption.”<sup>64</sup> A communication subject to this exemption is also exempt  
16 from the Act’s disclosure, disclaimer, and reporting requirements.<sup>65</sup>

17 To determine whether the press exemption applies, the Commission uses a two-part  
18 test.<sup>66</sup> First, it assesses whether the entity engaged in the challenged activity is a “press entity”

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<sup>63</sup> 11 C.F.R. §§ 100.73, 100.132; *see also* 52 U.S.C. § 30101(9)(B)(i). The Act and Commission regulations define the terms “contribution” and “expenditure” to include the gift of “anything of value” for the purpose of influencing a federal election. 52 U.S.C. §§ 30101(8)(A)(i), 9(A)(i).

<sup>64</sup> Advisory Op. 2010-08 (Citizens United) at 3 (“AO 2010-08”).

<sup>65</sup> AO 2010-08 at 7.

<sup>66</sup> *Id.* at 4; Advisory Op. 2005-16 (Fired Up!) at 4 (“AO 2005-16”).

1 as described by the Act and regulations.<sup>67</sup> Second, if the entity is a press entity, to determine the  
2 scope of the exemption, the Commission examines whether (1) the entity is owned or controlled  
3 by a political party, political committee, or candidate,<sup>68</sup> and (2) whether the entity is acting  
4 within its "legitimate press function" in conducting the challenged activity.<sup>69</sup>

5 The Commission has recognized that an entity that is otherwise eligible for the press  
6 exemption "would not lose its eligibility merely because of a lack of objectivity in a news story,  
7 commentary, or editorial, even if the news story, commentary, or editorial expressly advocates  
8 the election or defeat of a clearly identified candidate for Federal office."<sup>70</sup> However, where an  
9 entity is owned or controlled by a political party, political committee, or candidate, the  
10 exemption applies only for costs of news stories that represent "a bona fide news account  
11 communicated in a publication of general circulation . . . [t]hat is part of a general pattern of  
12 campaign-related news account that give reasonably equal coverage to all opposing candidates in  
13 the circulation or listening area[.]"<sup>71</sup>

14 Here, there is insufficient information in the record to determine whether LGIS or  
15 Locality Labs are press entities and were acting within their legitimate press function when they

<sup>67</sup> AO 2010-08 at 4; AO 2005-16 at 4. The Commission has explained that when determining whether the term "press entity" applies, it "has focused on whether the entity in question produces on a regular basis a program that disseminates news stories, commentary, and/or editorials." AO 2010-08 at 7.

<sup>68</sup> See 52 U.S.C. § 30101(9)(B)(i); 11 C.F.R. §§ 100.73, 100.132.

<sup>69</sup> *Reader's Digest Ass'n. v. FEC*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981).

<sup>70</sup> AO 2005-16 at 6; see also AO 2010-08 ("While Citizens United's films may be designed to further its principal purpose as a non-profit advocacy organization, an entity otherwise eligible for the press exemption does not lose its eligibility merely because of a lack of objectivity in a news story, commentary, or editorial.").

<sup>71</sup> 11 C.F.R. §§ 100.73; 100.132; see also Advisory Op. 2005-07 (Mayberry) (concluding that the Act's limitations applied where a candidate-owned newspaper published commentaries or editorials that were coordinated communications). Cf. First Gen. Counsel's Rpt. at 8, MUR 7163 (Citizens for Joe Miller) (concluding that Restore Liberty, LLC qualified as a press entity, but that the press exemption did not apply under the facts of the case because of the large number of pro-Miller articles and commentaries).



1 produced or distributed the Khouri articles. First, the record is incomplete regarding the  
2 ownership of these entities to permit us to determine whether they may be owned or controlled  
3 by a political party, political committee, or candidate. Proft is simultaneously the treasurer of  
4 both the Liberty Federal and State PACs, and part owner of LGIS. Based on the evidence in the  
5 record, it is possible to infer that Proft may have directed significant funding from the Federal  
6 PAC to the State PAC to Newsinator in order to pay for the production and distribution of the  
7 publications at issue. The Responses to the Complaint do not disclose the other owners of LGIS,  
8 though news sources suggest that Timpone, owner of Newsinator and LocalLabs, was also a part  
9 owner of LGIS.

10 The record also raises questions as to whether Proft or Liberty Federal PAC may have, in  
11 fact, exercised control over the publications. Although Proft avers that he did not exercise day-  
12 to-day control of the content that LGIS produced, past versions of the publications' websites  
13 have listed "Liberty Principles PAC," a committee that Proft controls, as funding the  
14 publications.<sup>72</sup> While Liberty State PAC's reports do not show any disbursements to LGIS or  
15 LocalLabs for 2016, they do show over \$300,000 in payments to Newsinator for "advertising –  
16 newspaper" for that year, including after August 2016, when LGIS had already purportedly taken  
17 over the publications.<sup>73</sup>

18 Further, it appears that a large amount of Liberty State PAC's funding has come from  
19 entities controlled by Proft: almost \$2 million in disbursements from Liberty Federal PAC since

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<sup>72</sup> *Supra* at 6.

<sup>73</sup> Liberty State PAC records show only one disbursement to LocalLabs, dated February 15, 2018, in the amount of \$5,400. See <https://www.elections.il.gov/CampaignDisclosure/ExpendituresSearchByCommittees.aspx>.

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1 2014, \$325,000 in loans from Proft through his non-profit, the Illinois Opportunity Project, and  
2 \$125,000 in loans from Proft's state campaign committee in 2016.<sup>74</sup>

3 Second, there are additional questions regarding whether LGIS and LocalLabs were  
4 acting within their legitimate press function when they produced or distributed the Khouri  
5 articles. The Complaint challenges whether the publications were "part of a regular publishing  
6 routine," or "rather exemplify a short-term communications scheme aimed at influencing  
7 elections in Illinois," "operat[ing] more like political propaganda."<sup>75</sup> Proft has publicly stated  
8 that the newspapers are designed to promote a particular "agenda," and the publications'  
9 websites state that they are supported by advocacy groups "who share our beliefs in limited  
10 government."<sup>76</sup> However, because the availability of the press exemption is dependent upon the  
11 publications' ownership and control, which at this stage is unclear, we do not need to reach an  
12 examination of whether the entities were acting within their legitimate press function here.

13 **B. The Commission Should Dismiss the Allegations that the Respondent Publishers**  
14 **Coordinated with the Khouri Committee**

15  
16 There insufficient information to determine whether the Respondent publishers fall  
17 within the scope of the press exemption. Assuming the exemption does not apply, the next step  
18 is to evaluate whether the Khouri articles appearing in the publications were coordinated

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<sup>74</sup> *Supra* note 26. "Proft for Governor" made additional loans to Liberty State PAC in 2018 making the total loans from that source come to \$370,000. *See* <https://www.elections.il.gov/CampaignDisclosure/ContributionsSearchByAllContributions.aspx>.

<sup>75</sup> Compl. at 5.

<sup>76</sup> *See, e.g.,* <http://dupagepolicyjournal.com/about-us> (last visited Mar. 9, 2017). Proft has also been quoted as stating, "Every newspaper is an election tool. We're just transparent about it. Show me a newspaper that doesn't report on certain candidates and make endorsements. We're just honest about it." *See* Jean Lotus, *New weekly newspaper mailers part of GOP Super PAC strategy in west Cook County*, COOK CNTY. CHRONICLE (Feb. 17, 2016), available at <http://chronicleillinois.com/news/cook-county-news/new-weekly-newspaper-mailers-part-of-gop-super-pac-strategy-in-west-cook-county/>.

1 communications as alleged by the Complaint. Communications that are paid for by a third party  
2 and coordinated with a candidate or a candidate's authorized committee are treated as in-kind  
3 contributions to the candidate.<sup>77</sup> Payments for coordinated communications are therefore subject  
4 to the Act's contribution limits and source prohibitions, as well as its reporting requirements.<sup>78</sup>  
5 The Commission's regulations provide a three-part test for determining when a communication  
6 is a coordinated expenditure. A communication must: (1) be paid for by a person other than the  
7 candidate or candidate's committee; (2) satisfy one or more of five content standards set forth at  
8 11 C.F.R. § 109.21(c); and (3) satisfy one or more of six conduct standards set forth at 11 C.F.R.  
9 § 109.21(d).<sup>79</sup> Under the Commission's regulations, all three prongs must be satisfied for a  
10 communication to be considered coordinated.<sup>80</sup> The candidate's campaign committee must  
11 report such a coordinated communication as both an in-kind contribution received and as an  
12 expenditure.<sup>81</sup>

13 Here, the publications at issue featuring the Khouri articles were paid for by a third party  
14 — LGIS, LocalLabs, or possibly the Liberty Federal or State PACs. Additionally, the articles  
15 satisfy the content prong of the Commission's coordinated communication regulations because

<sup>77</sup> 11 C.F.R. § 109.20(a).

<sup>78</sup> *Id.* § 109.21(b); *see also* 52 U.S.C. §§ 30104(b) (reporting requirements), 30116(a)(1) (contribution limits), 30118(a) (source prohibitions); 11 C.F.R. §§ 104.13(a) (disclosure of in-kind contributions), 104.3 (reporting requirements), 110.1(b) (contribution limits). The Act likewise prohibits a candidate or political committee from knowingly accepting contributions in violation of the contribution limits and source prohibitions set forth in the Act. *See* 52 U.S.C. §§ 30116(f); 30118(a).

<sup>79</sup> 11 C.F.R. 109.21(a)-(b).

<sup>80</sup> *Id.*; *see also* Explanation and Justification, *Coordinated and Independent Expenditures*, 68 Fed. Reg. 421, 453 (Jan. 3, 2003) ("Coordinated and Independent Expenditures E&J").

<sup>81</sup> 11 C.F.R. §§ 109.20(b) and 109.21(b).

1 they are public communications that refer to a clearly identified congressional candidate and  
2 were distributed in that candidate's district within 90 days of the general election.<sup>82</sup>

3 The communications do not, however, appear to satisfy the conduct prong of the  
4 coordinated communications test. The conduct standards include: (1) communications made at  
5 the request or suggestion of the relevant candidate or committee; (2) communications made with  
6 the material involvement of the relevant candidate or committee; (3) communications made after  
7 substantial discussions between the person paying for the communication and the clearly  
8 identified candidate; (4) communications created, produced, or disseminated through the use of a  
9 common vendor; (5) communications paid for by a former employee or independent contractor;  
10 and (6) communications made through the dissemination, distribution, or republication of  
11 campaign materials.<sup>83</sup>

12 The only information the Complaint presents in support of coordination is an alleged  
13 relationship between Proft, treasurer of the Liberty Federal and State PACs and part-owner of  
14 LGIS, and Khouri, a federal candidate. According to the Complaint, Proft's fundraising and  
15 support for Khouri, as well as his attendance at campaign events suggests coordination, but the  
16 available information, without more, fails to support a reasonable inference that Proft's activities,  
17 satisfy the conduct prong. Proft claims that he did not exercise day-to-day control of the  
18 publications, and the Complaint does not provide information to suggest that the LGIS's news  
19 stories were requested by Khouri or her campaign committee, that they were made with material  
20 involvement by Khouri or her committee, or that they were made after substantial discussions

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<sup>82</sup> 11 C.F.R. §§ 109.21(c)(2), 100.26. As noted *supra*, the articles were dated August 14 and 15, 2016, within 90 days of November 8, 2016, general election.

<sup>83</sup> *Id.* § 109.21(d)(1)-(6).

1 between those parties. The Commission has stated that “a request or suggestion must be based  
2 on specific facts, rather than presumed, to satisfy this conduct standard.”<sup>84</sup> Here, however, the  
3 Complaint is speculative in reasoning that, because a Profit-owned publication features a news  
4 article about Khouri, then there must have been some discussion or request or suggestion.<sup>85</sup>  
5 Additionally, the Complaint does not allege, and the available record does not indicate, that the  
6 parties shared a common vendor, former employee, or independent contractor. Because the  
7 record contains insufficient information to give rise to a reasonable inference that LGIS,  
8 LocalLabs, or Liberty Federal PAC coordinated the content of its publications with the Khouri  
9 Committee, we recommend that the Commission dismiss the allegation that the Respondents  
10 violated the Act by making, accepting, or failing to report coordinated communications.<sup>86</sup>

11 **C. The Commission Should Dismiss the Republication Allegation**

12 Finally, the Complaint alleges that the publications republished campaign materials  
13 featured on Khouri’s Facebook page. Under the Act, “the financing by any person of the  
14 dissemination, distribution, or republication, in whole or in part, of any broadcast or any written,  
15 graphic, or other form of campaign materials prepared by the candidate, his campaign

<sup>84</sup> Coordinated and Independent Expenditures E&J, 68 Fed. Reg. at 432.

<sup>85</sup> Compare Factual and Legal Analysis at 8-9, MUR 6793 (Steve Stockman for Senate) (stating that conduct prong was satisfied where there was evidence that the candidate personally supervised the publication and distribution of the mailer at issues) with Factual and Legal Analysis at 9, MUR 6613 (Prosperity for MI) (finding dismissal appropriate where although the ads contained similar themes, “the issues presented in the ads are not new criticisms of [the candidate]” and there was no evidence regarding the sharing of information between the parties to satisfy the conduct prong).

<sup>86</sup> The Complaint does not allege that the Khouri news articles featured in the publications constitute independent expenditures pursuant to 11 C.F.R. § 100.16(a). Further, our review of the mailers reveal no instance in which the publications expressly advocate the election of Khouri. See 11 C.F.R. § 100.22(a), (b). Here, though the articles referencing Khouri are undoubtedly favorable to her, they do not contain verbs expressly urging voter action. Additionally, reasonable minds could differ as to whether the articles encourage Khouri’s election or instead merely provide coverage of her campaign statements consistent with the publications’ role as providers of local news. If the articles were to be considered independent expenditures, the payor would have been required to file an independent expenditure report disclosing the activity. See 52 U.S.C. § 30104(c).

1 committees, or their authorized agents shall be considered to be an expenditure.”<sup>87</sup> The  
2 republication of campaign materials prepared by a candidate’s authorized committee is also  
3 “considered a[n in-kind] contribution for the purposes of contribution limitations and reporting  
4 responsibilities of the person making the expenditure,”<sup>88</sup> because the person financing the  
5 communication “has provided something of value to the candidate [or] authorized committee.”<sup>89</sup>  
6 The Commission has determined that republication, *even in part*, constitutes a benefit to the  
7 campaign.<sup>90</sup> The candidate who prepared the campaign material does not receive or accept an  
8 in-kind contribution, and is not required to report an expenditure, unless the dissemination,  
9 distribution, or republication of campaign materials is a coordinated communication under  
10 Commission regulations.<sup>91</sup>

11 The Commission’s regulations set forth exceptions to the republication provision when,  
12 *inter alia*, “the campaign material is disseminated, distributed, or republished in a news story,  
13 commentary, or editorial” exempted under the press exemption or “the campaign material used  
14 consists of a brief quote of materials that demonstrate a candidate’s position as part of a person’s  
15 expression of its own views.”<sup>92</sup>

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<sup>87</sup> 52 U.S.C. § 30116(a)(7)(B)(iii).

<sup>88</sup> 11 C.F.R. § 109.23(a).

<sup>89</sup> Coordinated and Independent Expenditures E&J, 68 Fed. Reg. at 442. As the Commission has explained, “Congress has addressed republication of campaign material through [52 U.S.C. § 30116(a)(7)(B)(iii)] in a context where the candidate/author generally views the republication of his or her campaign materials, *even in part*, as a benefit” and “can be reasonably construed only as for the purpose of influencing an election.” *Id.* at 443 (emphasis added); *see also* Coordinated Communications, 71 Fed. Reg. 33,190, 33,191 (Jun. 8, 2006) (communications “that disseminate, distribute, or republish campaign materials, no matter when such communications are made, can be reasonably construed only as for the purpose of influencing an election”).

<sup>90</sup> Coordination and Independent Expenditures E&J, 68 Fed. Reg. at 442-43.

<sup>91</sup> 11 C.F.R. § 109.23(a).

<sup>92</sup> 11 C.F.R. § 109.23(b)(3)-(4).

1 Here, the publications disseminated quotes by the candidate from materials previously  
2 published on Khouri's Facebook page. In one article, titled "Tonia Khouri criticizes Obama  
3 administration for sending \$400 million to Iran," the *DuPage Policy Journal* quotes in full a  
4 brief, two paragraph commentary that Khouri (or her committee) published on her Facebook  
5 account in response to a news story regarding the Iran deal. In the other article, "Pondering her  
6 children's future prompts Khouri's congressional run," the publication quotes from a video  
7 published on Khouri's website and linked to her Facebook account. That article, however, also  
8 includes additional content regarding the race and Khouri's background interspersed throughout  
9 the article between those direct quotes.<sup>93</sup>

10 It appears that the quotations used in the articles duplicate statements that Khouri  
11 previously published on her Facebook page, and thus could constitute in-kind contributions  
12 through the republication of campaign materials. However, we recommend that the Commission  
13 dismiss the republication allegation under *Heckler v. Chaney* on the grounds of prosecutorial  
14 discretion, in light of the circumstances presented here, including: the fact that it is unclear  
15 whether the press exemption should apply to the entities that published the article (as analyzed  
16 above), the possibility that the "brief quote" exemption may apply, and that the cost of the  
17 republications was likely relatively modest and does not warrant the use of further Commission  
18 resources.<sup>94</sup>

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<sup>93</sup> That article also includes a headshot of Khouri that was once featured on her Facebook page. See <https://www.facebook.com/toniakhour/photos/a.290544000982171/866933746676524/?type=3&theater>.

<sup>94</sup> See *Heckler v. Chaney*, 470 U.S. 821, 831 (1985). As discussed in detail above, it is unclear whether LGIS or LocalLabs are press entities, and thus we cannot reach a conclusion as to whether Respondents were acting within the scope of the press exemption set out in 11 C.F.R. § 109.23(b)(3) when they published Khouri's quotes.

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1           The quoted materials could be viewed as being similar to, but possibly slightly more  
2 extensive than, the type of “brief quote of materials” covered by the Commission’s exemption  
3 for republications. For example, with the exception of one sentence explaining Khouri’s  
4 candidacy, the Iran article is comprised solely of her words, and the second article heavily quotes  
5 Khouri’s video message. But the Commission has not provided a precise guideline as to when a  
6 quote exceeds the “brief quote” standard allowed as an exemption.<sup>95</sup> Even if the quotes in  
7 articles at issue are more substantial than cases where the Commission found that the  
8 incorporation of a mere phrase did not qualify as republication, this appears less egregious than  
9 the wholesale reproduction of an entire campaign ad or mailer.<sup>96</sup>

10           Finally, and more importantly, the publication of the specific articles referencing Khouri  
11 appear to represent a relatively small cost to the publishers. While the factual record does not  
12 provide the details necessary to calculate the cost of production for the papers generally, or the  
13 costs associated with these specific articles, the allegedly republished materials consisted of  
14 several short paragraphs of quotes, and a photograph, possibly obtained from Khouri’s public  
15 Facebook page. The insertion of these quotes into short news articles that were part of multipage

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<sup>95</sup> Compare MUR 6535 (Restore Our Future) (finding republication where the ad replicated the candidate’s campaign ad with the only variation being the disclaimer at the end of each ad), with MUR 6502 (Nebraska Democratic Party) (no republication where state party ads used common political phrase previously used in a “tweet” posted by candidate’s campaign but contained significant additional language that differed from the campaign materials). See also MUR 5743 (Betty Sutton for Congress/Emily’s List), (Commission dismissed, with an admonishment, a complaint involving the alleged republication of campaign photographs in third-party mailers).

Additionally, Commissioners have disagreed over whether republication occurred in matters when the campaign materials allegedly republished are not materially the same. See, e.g., MURs 6617 (Vilsack) and 6667 (Bustos), Statement of Reasons of Comm’rs Hunter and Petersen; MURs 6357 (American Crossroads), MUR 5879 (Harry Mitchell/Democratic Senatorial Campaign Committee), Statements of Reasons of Chair Hunter and Comm’rs McGahn and Petersen.

<sup>96</sup> See *supra* note 95.



1 publications of community news would likely have resulted in only marginal additional  
2 expense.<sup>97</sup>

3 For the reasons set forth above, we recommend that the Commission exercise its  
4 prosecutorial discretion and dismiss the allegation that Respondents violated reporting and  
5 contribution limits by republishing campaign materials.

6 **IV. RECOMMENDATIONS**

- 7 1. Dismiss the allegation that Khouri for Congress and Paul Kilgore in his official  
8 capacity as treasurer, or Tonia Khouri violated 52 U.S.C. §§ 30104(b) or  
9 30116(f) in connection with alleged coordinated communications or the  
10 republication of campaign materials;  
11  
12 2. Dismiss the allegation that Liberty Principles PAC and Daniel Proft in his official  
13 capacity as treasurer violated 52 U.S.C. §§ 30104(b) or 30116(a) by making a  
14 coordinated communication or by republishing campaign materials;  
15  
16 3. Dismiss the allegation that Local Government Information Services, Inc. and  
17 Locality Labs, LLC violated 52 U.S.C. §§ 30116(a) or 30118(a) by making a  
18 coordinated communication or republishing campaign materials;  
19  
20 4. Approve the attached Factual and Legal Analysis;  
21  
22 5. Approve the appropriate letters;  
23

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<sup>97</sup> See, e.g., MUR 5743 (Betty Sutton) (dismissing with admonishment matter in which Emily's List used a headshot photo on one page of a multi-page mailer, based in part on the incidental use and *de minimis* value).

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6. Close the file.

Lisa J. Stevenson  
Acting General Counsel

Date: June 6, 2019

Charles Kitcher  
Charles Kitcher  
Acting Associate General Counsel for Enforcement

Mark Shonkwiler  
Mark Shonkwiler  
Assistant General Counsel

AJW  
Ana J. Peña-Wallace  
Attorney

1-800-DUTY-4-ND-0081

**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Liberty Principles PAC, Inc. and **MUR 7148**  
Dan Proft in his official capacity as  
treasurer  
Khouri for Congress and  
Paul Kilgore in his official capacity as  
treasurer  
Tonia Khouri  
Local Government Information  
Services, Inc.  
Locality Labs, LLC

**I. INTRODUCTION**

This matter was generated by a Complaint filed with the Federal Election Commission (the "Commission") alleging violations of the Federal Election Campaign Act of 1971, as amended, (the "Act"). The Complaint alleges that Liberty Principles PAC, Inc., a federal independent- expenditure-only political committee, and Dan Proft in his official capacity as treasurer ("Liberty Federal PAC"), violated the Act, by making in-kind contributions to Khouri for Congress and Paul Kilgore in his official capacity as treasurer (the "Khouri Committee") in the form of coordinated communications that republished Khouri Committee campaign materials in a format designed to look like local community newspapers. The Complaint attaches copies of news articles dated August 2016 that were excerpted from the *DuPage Policy Journal* as examples of the alleged republication. The Complaint further alleges that the Khouri Committee accepted and failed to report these in-kind contributions in violation of the Act.

Respondent Local Government Information Services, Inc. ("LGIS"), an Illinois corporation partially owned by Proft, claims responsibility for production and distribution of the publications that featured the Khouri articles and asserts that its publication of these materials is protected by the press exemption. LGIS contracts with various entities, including Locality Labs,

1 Inc., LLC (“LocalLabs”), to prepare content for the publications. Liberty Federal PAC, in turn,  
2 denies any responsibility for the publications at issue in these matters; however, its disclosure  
3 reports show that 99% of its disbursements went to an affiliated state political committee,  
4 Liberty Principles PAC, Inc. State Account (“Liberty State PAC”), also run by Proft, which then  
5 reported making large disbursements to Newsinator LLC, an entity that appears to be closely  
6 related to both LGIS and LocalLabs.

7 Whether LGIS is, in fact, covered by the press exemption is complicated by Liberty  
8 Federal PAC’s apparent indirect funding of the publications and Proft’s dual role as treasurer of  
9 Liberty Federal PAC and as an owner of LGIS. It is unnecessary for the Commission to make a  
10 determination on the application of the press exemption here, because, even if the exemption did  
11 not apply, the record contains insufficient information to give rise to a reasonable inference that  
12 LGIS, LocalLabs, or Liberty Federal PAC coordinated the content of its publications with the  
13 Khouri Committee. Accordingly, the Commission dismisses the coordination allegation.  
14 Additionally, as discussed further below, given the overall context and the apparently modest  
15 cost of the specific Khouri-related articles at issue, the remaining portion of the matter does not  
16 warrant the use of additional Commission resources. Therefore, the Commission exercise its  
17 prosecutorial discretion to dismiss the republication allegation and close the file.<sup>1</sup>

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<sup>1</sup> See *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

1 **II. FACTUAL SUMMARY**

2 **A. Background**

3 Tonia Khouri was a 2016 candidate for the U.S. House of Representatives in Illinois'  
4 Eleventh congressional district.<sup>2</sup> Khouri for Congress is her principal campaign committee.<sup>3</sup>  
5 Paul Kilgore is the committee's treasurer.<sup>4</sup>

6 Dan Proft is a radio talk show host in Chicago, Illinois; he is also a political  
7 commentator, entrepreneur and activist, and runs several organizations.<sup>5</sup> Proft is the co-owner of  
8 LGIS, the publisher of various local community newspapers in the State of Illinois.<sup>6</sup> Proft is also  
9 the treasurer of federal independent-expenditure-only political committee Liberty Principles  
10 PAC, Inc., as well as a similarly named state committee, Liberty Principles PAC, Inc. State  
11 Account, which Proft describes as "one of Illinois' largest Independent Expenditure PACs."<sup>7</sup>  
12 Additionally, Proft is a co-founder of a 501(c)(4) known as "The Illinois Opportunity Project,"

<sup>2</sup> Khouri lost the 2016 general election. See *Federal Elections 2016: Election Results for the U.S. President, the U.S. Senate, and the U.S. House of Representatives* at 116, available at <https://transition.fec.gov/general/FederalElections2016.shtml>.

<sup>3</sup> Tonia Khouri, FEC Form 2, *Statement of Candidacy* (Apr. 9, 2015).

<sup>4</sup> Khouri for Congress, FEC Form 1, *Statement of Organization* (Apr. 9, 2015).

<sup>5</sup> See *About Dan Proft*, MORNING ANSWER CHICAGO, <http://morninganswerchicago.com/about-dan-proft/> (last visited May 31, 2019); *About Dan Proft*, Upstream Ideas, <http://upstream-ideas.com/about-dan-proft> (last visited Mar. 31, 2019). Proft was also a former candidate for Governor of Illinois. *Candidate Detail*, Ill. State Bd. of Elections, <https://www.elections.il.gov/CampaignDisclosure/CandidateDetail.aspx?ID=%2b41a1MRZw9IXmWg5HV9wmg%3d%3d>.

<sup>6</sup> LGIS Resp. (Nov. 17, 2016), Decl. D. Proft ¶ 1. The pleadings do not include names of the other owners of LGIS.

<sup>7</sup> See <https://illinoisopportunity.org/the-project/#Dan%20Proft>; <http://upstream-ideas.com/about-dan-proft>.

1 “which advocates for free market public policy solutions.”<sup>8</sup> According to the Complaint, Profit  
2 raised money for Khouri’s 2016 candidacy and attended campaign events.<sup>9</sup>

3 Profit describes LGIS as “a for-profit media corporation incorporated in the State of  
4 Illinois on August 15, 2016 and as a continuing news organization” engaged in the “production  
5 and distribution of local and state news.”<sup>10</sup> LGIS distributes both online content and print  
6 newspapers. LGIS’s website lists 20 digital and 11 print news editions covering different areas  
7 of Illinois, including the *DuPage Policy Journal*.<sup>11</sup> LGIS was an active corporation during the  
8 2016 election cycle, but has been in “dissolved” status since January 11, 2019.<sup>12</sup>

9 LGIS contracts with Locality Labs, a limited liability corporation that has been registered  
10 in Illinois since November 10, 2008, and is also known as LocalLabs.<sup>13</sup> LocalLabs provides

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<sup>8</sup> <https://illinoisopportunity.org/the-project/#Dan%20Profit>.

<sup>9</sup> Compl. at 7-8.

<sup>10</sup> Decl. D. Profit ¶ 3. The Response states that LGIS is a for-profit corporation, but does not specify how it generates revenue. The publications’ websites feature advertisements and offer subscriptions for \$54.99 annually, though it appears from the Responses that the print editions were also sent to readers who did not request a subscription, as well as left in high traffic areas for free. See <https://dupagepolicyjournal.com/subscription> (last visited Mar. 7, 2019). Additionally, the newspapers’ current websites state that they receive funding “by advocacy groups who share our beliefs in limited government.” See <http://dupagepolicyjournal.com/about-us> (last visited May 31, 2019).

<sup>11</sup> The LGIS website lists the following digital and print publications: Carbondale Reporter, Chambana Sun, Chicago City Wire, DuPage Policy Journal, DeKalb times, East Central Reporter, Galesburg Reporter, Grundy Reporter, Illinois Valley Times, Kane County Reporter, Kankakee Times, Kendall County Times, Lake County Gazette, Macon Reporter, McHenry Times, McClean County Times, Metro East Sun, North Cook News, North Egypt News, NW Illinois News, Peoria Standard, Prairie State Wire, Quincy Reporter, Rock Island Today, Rockford Sun, Sangamon Sun, SE Illinois News, South Central Report, South Cook News, Southern Illinois News, SW Illinois, West Central Reporter, West Cook News, Will County Gazette. See [https://lgis.co/our\\_publications](https://lgis.co/our_publications) (last accessed May 31, 2019).

<sup>12</sup> See *Corp/LLC Search*, Office of the Ill. Sec. of State, <https://www.ilsos.gov/corporatellc/CorporateLlcController>.

<sup>13</sup> LocalLabs Resp. (Nov. 17, 2016), Decl. B. Timpone ¶ 1. As of this date, LocalLabs remains on active status with the Illinois Secretary of State, but its website is no longer operating. See <https://www.ilsos.gov/corporatellc/CorporateLlcController> and <https://locallabs.com/>. It appears that the company

1 local and state news content for publication by LGIS.<sup>14</sup> Brian Timpone is the founder and CEO  
2 of LocalLabs.<sup>15</sup> Timpone has also been reported as the owner of Newsinator, LLC, another  
3 entity that distributed the same community newspapers at issue in this matter before LGIS  
4 incorporated in 2016 and took over production and distribution of the newspapers.<sup>16</sup> Timpone's  
5 declaration submitted with the LGIS and LocalLabs Responses to the Complaint, however, does  
6 not mention Newsinator or state whether he played any role with LGIS.

7 The websites for the individual LGIS publications, including the *DuPage Policy Journal*,  
8 currently state that they are “a product of LGIS – Local Government Information System” and  
9 that they are funded “in part, by advocacy groups who share our beliefs in limited  
10 government.”<sup>17</sup> Before the fall of 2016, most of the websites for these same publications did not  
11 make any reference to LGIS but rather stated that “[a] print version of this paper is currently

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website was last active on or about November 2, 2017. See  
<https://web.archive.org/web/20171102104213/http://www.locallabs.com/>.

<sup>14</sup> LocalLabs Resp., Decl. B. Timpone ¶¶ 7-8.

<sup>15</sup> *Id.* ¶ 1.

<sup>16</sup> Timpone was Newsinator's registered agent until 2014, but is now listed as an “LLC Manager.” The company remains in active status. See <https://www.ilsos.gov/corporatellc/CorporateLlcController>. See Jackie Spinner, *An Illinois PAC Decides to Get Into Local News — Just In Time for the Primary*, COLUMBIA JOURNALISM REVIEW (Mar. 15, 2016), available at [http://www.cjr.org/united\\_states\\_project/illinois\\_pac\\_newspapers.php](http://www.cjr.org/united_states_project/illinois_pac_newspapers.php). Newsinator, LLC is not a Respondent in this matter.

It appears the publications were produced prior to LGIS's incorporation in August 2016 by different entities. See, e.g., *Apr. 11, 2015 Snapshot*, DUPAGE POLICY JOURNAL, <https://web.archive.org/web/20150411163645/https://dupagepolicyjournal.com/> (displaying a 2014 copyright date). Coverage regarding the local community newspapers began as early as February 2016. See Mike Riopell, *Newspaper Run by Dan Proft's PAC hits Lake County*, DAILY HERALD (Feb. 19, 2016), available at <http://www.dailyherald.com/article/20160218/news/160218834/>.

<sup>17</sup> See, e.g., <https://dupagepolicyjournal.com/about-us>.

1 being funded by Liberty Principles PAC” and that the publication was “a product of Locality  
2 Labs, Inc.”<sup>18</sup>

3 Liberty Federal PAC, an independent-expenditure-only political committee, registered  
4 with the Commission on March 1, 2012, and has filed quarterly reports since that time.<sup>19</sup> As  
5 previously noted, Proft serves as its treasurer. Liberty Federal PAC has never reported making a  
6 federal independent expenditure. Its disclosure records suggest that it primarily supports its  
7 aforementioned similarly-named state independent-expenditure-only committee, Liberty  
8 Principles PAC, Inc. State Account.<sup>20</sup> In the 2016 election cycle, Liberty Federal PAC reported  
9 only one disbursement: a \$15,000 disbursement to Liberty State PAC.<sup>21</sup> Additionally, in 2014,  
10 Liberty Federal PAC reported making \$1,802,410.15 in total disbursements, \$1.8 million of  
11 which went to the Liberty State PAC.<sup>22</sup> In 2016, Liberty Federal PAC reported no receipts,

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<sup>18</sup> See, e.g., Mar. 2, 2016 Snapshot, *About Us*, MCHENRY TIMES, <https://web.archive.org/web/20160302153436/http://mchenrytimes.com/about-us> (stating print version was funded by Liberty Principles PAC and that the publication was a product of Locality Labs, Inc); May 2, 2016 Snapshot, *About Us*, EAST CENTRAL REPORTER, <https://web.archive.org/web/20160502213642/https://eastcentralreporter.com/about-us> (stating print version was funded by Liberty Principles PAC and that the publication was a product of Locality Labs, Inc); Aug. 30, 2016 Snapshot, *About us*, DUPAGE POLICY JOURNAL, <http://web.archive.org/web/20160830112531/https://dupagepolicyjournal.com/about-us> (stating that funding was provided by “advocacy groups who share our beliefs in limited government” and that it was a product of Locality Labs, Inc). Based on a review of the various websites, it does not appear that any of them ever listed Newsinator.

<sup>19</sup> See Liberty Principles PAC, Inc., FEC Form 1, *Statement of Organization* (Feb. 28, 2012).

<sup>20</sup> See Liberty Principles PAC, Inc., FEC filings at <https://www.fec.gov/data/committee/C00514299/?tab=filings>.

<sup>21</sup> See Liberty Principles PAC, Inc., 2016 30-Day Post-Election Report at 6 (Dec. 6, 2016).

<sup>22</sup> See Liberty Principles PAC, Inc., 2014 April Quarterly Report at 7 (Apr. 15, 2014).



1 while in 2014 it reported receiving \$1.78 million in contributions, of which all but \$2,000 came  
2 from one donor.<sup>23</sup>

3 Liberty State PAC registered as an independent-expenditure-only political committee  
4 with Illinois on October 9, 2012. Proft also serves as that committee's chairman and treasurer.<sup>24</sup>  
5 Liberty State PAC has reported significant independent expenditures in support of or opposition  
6 to Illinois state candidates in recent years. In 2016, for example, it reported making  
7 approximately \$9.9 million in state independent expenditures.<sup>25</sup> Additionally, based on amended  
8 reports filed in 2019, Liberty State PAC reported making \$329,082 in independent expenditures  
9 that were paid to Newsinator, LLC between February 1, 2016 and October 19, 2016, for  
10 "advertising – newspaper" in support of state candidates.<sup>26</sup> The State PAC has not reported any  
11 federal activity or any payments to LGIS or LocalLabs.

12 Illinois State Board of Elections records show that three complaints were filed against  
13 Liberty State PAC in 2016 alleging that the committee failed to include "proper attribution of  
14 source in political communications" and that it coordinated electioneering communications with

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<sup>23</sup> That donor, Richard Uihlein, also contributed \$125,000 to Liberty Federal PAC in 2012. During that cycle, the PAC raised a total of \$278,200. See Liberty Principles PAC, Inc., FEC filings at <https://www.fec.gov/data/committee/C00514299/?tab=raising&cycle=2012>.

<sup>24</sup> See Liberty Principles PAC, Form D-1, *Statement of Organization*, (Ill. State Bd. of Elections) (Oct. 11, 2012), <https://www.elections.il.gov/CampaignDisclosure/CommitteeDetail.aspx?id=ITGV5m%2bSOpFSApzT5ynUMQ%3d%3d&pageindex=1ir0i4Uzc3E%3d>. According to Liberty State PAC's disclosure reports, in 2016 it received over \$325,000 in loans from Proft's non-profit, the Illinois Opportunity Project, and a \$125,000 loan from "Proft for Governor," Proft's former state campaign committee. See Liberty Principles PAC, Ill. State Bd. of Elections filings at <https://www.elections.il.gov/campaigndisclosure/committeesearch.aspx>; <https://illinoisopportunity.org/the-project/#Dan%20Proft>.

<sup>25</sup> See Liberty Principles PAC, 2016 Quarterly Reports (Ill. State Bd. of Elections), available at <https://www.elections.il.gov/campaigndisclosure/committeesearch.aspx>.

<sup>26</sup> See Liberty Principles PAC Amended Quarterly Reports covering Jan. 1, 2016 through March 31, 2016, and October 1, 2016 through December 31, 2016 (filed Jan. 15, 2019) (Ill. State Bd. of Elections).

1 candidates.”<sup>27</sup> The state board of elections found that the complaints were “filed on justifiable  
2 grounds” and admonished Liberty State PAC “to ensure that all future political literature and  
3 communications identify the PAC as payor,” that it include “a proper attribution of source on all  
4 future materials,” and noted that a future violation would subject that PAC to penalties.<sup>28</sup>  
5 Attorney Christine Svenson, who represented Liberty State PAC before the state board of  
6 elections, is also the registered agent for LGIS.<sup>29</sup>

7 **B. The 2016 Publications**

8 Relying on publicly-available news reports, the Complaint alleges that in 2016 Liberty  
9 Federal PAC distributed publications to Illinois voters in the Eleventh Congressional District in  
10 support of Khouri’s congressional campaign.<sup>30</sup> According to the Complaint, Illinois voters  
11 received these printed publications unsolicited and the publications were also made freely  
12 available in high-traffic areas.<sup>31</sup> The Complaint identifies fourteen publications aimed at various  
13 local Illinois communities being distributed in this manner, each of which has a corresponding  
14 website with similar content, design, format, and logo.<sup>32</sup>

<sup>27</sup> <https://www.elections.il.gov/CampaignDisclosure/ComplaintSearch.aspx> .

<sup>28</sup> *Id.*; see also Regular Meeting Minutes (Mar. 14, 2016), Ill. State Bd. of Elections, [https://www.elections.il.gov/downloads/abouttheboard/pdf/03\\_14\\_16minutes.pdf](https://www.elections.il.gov/downloads/abouttheboard/pdf/03_14_16minutes.pdf) .

<sup>29</sup> Regular Meeting Minutes for June 19, 2018, Ill. State Bd. of Elections, <https://www.elections.il.gov/downloads/abouttheboard/pdf/june%2019-18%20regular%20meeting%20minutes.pdf> (noting Svenson appearing on behalf of Liberty State PAC with regard to an appeal); Corporate/LLC Search, Office of the Ill. Sec. of State, <https://www.ilsos.gov/corporatellc/CorporateLlcController> (last accessed May 31, 2019) (listing Svenson as LGIS’s registered agent).

<sup>30</sup> Compl. at 1-2.

<sup>31</sup> *Id.* 1-2, 4.

<sup>32</sup> See *id.* at 2 (identifying Sangamon Sun, Chambana Sun, East Central Reporter, Kankakee Times, Lake County Gazette, McHenry Times, Metro East Sun, North Cook News, Rock Island Today, SW Illinois News, West Central Reporter, and West Cook News).

1 In support of the allegations, the Complaint attaches two excerpts from one of the  
2 publications, the *DuPage Policy Journal*, that includes quotes from Khouri. The first excerpt is  
3 an article from the August 15, 2016, *DuPage Policy Journal* entitled “Tonia Khouri criticizes  
4 Obama administration for sending \$400 million to Iran,” which was included in the  
5 “Government Notes” section of the publication.<sup>33</sup> It begins with one sentence identifying Khouri  
6 as the Republican candidate for Illinois’ Eleventh Congressional District and is followed,  
7 without any additional commentary, by a two-paragraph quote (of approximately 120 words)  
8 originally published on Khouri’s Facebook page. The second article, published on August 14,  
9 2016, in the *DuPage Policy Journal*, is titled “Pondering her children’s future prompts Khouri’s  
10 congressional run” and quotes approximately 80 words from a “special message to mothers”  
11 video originally posted on Khouri’s Facebook page.<sup>34</sup> That article includes brief commentary  
12 interspersed throughout the direct Facebook quotes, including an overview of the earlier primary  
13 election results of Khouri’s race and biographical information about Khouri. It also includes  
14 Khouri’s headshot that matches a photograph that appeared on her Facebook page.<sup>35</sup>

15 The Complaint alleges that these publications were designed to look like newspapers,  
16 which would fall within the scope of the Commission’s press exemption, but are in reality akin  
17 to campaign mailers. In support, the Complaint alleges that:

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<sup>33</sup> Compl. Ex. A.

<sup>34</sup> An archived version of the message is available, but the video no longer works.  
<https://web.archive.org/web/20160615061642/http://toniakhouri.com/a-moms-message/>.

<sup>35</sup> See Compl. at 7 (Oct. 6, 2016); *id.*, Ex. A;  
<https://www.facebook.com/toniakhouri/photos/a.290544000982171/866933746676524/?type=3&theater>. The dates  
of these articles are provided by the Complainant, but do not appear on the attached exhibits, and therefore cannot be  
verified. The dates are not disputed by Respondents.

- 1 • The publications only recently began distribution, “appearing in voter’s mailboxes  
2 ‘just in time for the primary’ elections in Illinois.”<sup>36</sup>  
3  
4 • The publications’ coverage of local government news are merely reproductions “of  
5 information already made available to the public, like meeting agendas.”<sup>37</sup>  
6  
7 • The publications quote directly from Khouri’s website and Facebook page,  
8 republishing and distributing campaign materials to readers.<sup>38</sup>  
9  
10 • The General Counsel of the Illinois Press Association publicly challenged the  
11 legitimacy of the publishers as press entities.<sup>39</sup>  
12  
13 • The publications do not include a mailing address or phone number, and give  
14 ““readers no information about who runs it’ other than an email address and Twitter  
15 account.”<sup>40</sup>  
16  
17 • Recipients of the publications received copies without subscribing, and copies were  
18 left in high traffic areas for free.<sup>41</sup>  
19  
20 • Recipients of the publications have filed complaints with the Illinois State Board of  
21 Elections, “asking for an investigation into these ‘faux newspapers.’ ”<sup>42</sup>  
22  
23 • The publications are controlled by a federal political committee, Liberty Principles  
24 PAC, and the PAC’s treasurer, Proft, has publicly taken credit for distributing these  
25 publications, that he says are “designed to cover issues ignored by other media and  
26 also to influence policy and elections.”<sup>43</sup>  
27

<sup>36</sup> Compl. at 4 (quoting Spinner, *supra* note 17).

<sup>37</sup> *Id.* (quoting Rick Miller, *The “Communications Platform” Stirs Controversy*, CAPITAL FAX (Jul. 25, 2016), available at <https://capitolfax.com/2016/07/25/the-communications-platform-stirs-controversy/>).

<sup>38</sup> See Compl. at 7, Ex. A.

<sup>39</sup> Compl. at 4 (quoting Tom Collins, *It Looks Like a Newspaper, But it Isn’t*, NEWS TRIBUNE (Jul. 23, 2016), available at [http://www.newstrib.com/news/local\\_news/it-looks-like-a-newspaper-but-it-isn-t/article\\_612fdcc-e4a4-57ca-a070-217b831ae110.html](http://www.newstrib.com/news/local_news/it-looks-like-a-newspaper-but-it-isn-t/article_612fdcc-e4a4-57ca-a070-217b831ae110.html)).

<sup>40</sup> *Id.* (quoting Miller, *supra* note 39).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* (quoting Collins, *supra* note 41).

<sup>43</sup> *Id.* at 6 (quoting Spinner, *supra* note 17)

1           The Complaint further alleges that certain material contained in these publications  
2 constitute coordinated communications with the Khouri committee because they were paid for by  
3 Liberty Federal PAC, contained republications of Khouri campaign materials, and identified a  
4 congressional candidate within 90 days of an election.<sup>44</sup> Additionally, the Complaint alleges that  
5 Proft's involvement with fundraising for Khouri's campaign, attendance at her campaign events,  
6 and his role in hosting events with the candidate were also proof of coordination.<sup>45</sup> The  
7 Complaint contends that the publications therefore should have been reported as in-kind  
8 contributions by the Khouri Committee and Liberty Federal PAC.

9           Liberty Federal PAC's Response denies that it paid for the publications. In a sworn  
10 declaration attached to the Response, Proft avers that "Liberty Principles PAC, Inc. did not  
11 distribute nor pay for the production or distribution of any of the publications at issue in [the  
12 Complaint], including publications regarding Tonia Khouri's congressional campaign," and that  
13 "[t]he federal account of Liberty Principles PAC, Inc. has not distributed nor paid for the  
14 production or distribution of any publications relating to the federal 2016 primary or general  
15 election."<sup>46</sup> The Response does not address the reported disbursements that Liberty Federal PAC  
16 made to the Liberty State PAC that may have been used to pay Newsinator for production and  
17 distribution of the publications. Liberty State PAC was not named in the Complaint and is not a  
18 Respondent in this matter.

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<sup>44</sup> *Id.* at 6-7

<sup>45</sup> *Id.* at 7-8.

<sup>46</sup> Liberty Federal PAC Resp. (Nov. 17, 2016), Decl. of D. Proft ¶¶ 3-4.

1 LGIS and LocalLabs submitted separate, but similar, Responses to the Complaint. Each  
2 Response attaches the same declarations from Proft and Timpone.<sup>47</sup> LGIS states that it has  
3 produced the weekly community newspapers, including the *Du Page Policy Journal*, since it  
4 incorporated in August 2016,<sup>48</sup> and that the newspapers are mostly “subscription based,” but  
5 have also been mailed to community residents without a request from them and provided for free  
6 in news racks across Illinois.<sup>49</sup> It contends that because it qualifies for the press exemption, it  
7 did not make a contribution or expenditure in connection with a federal election.<sup>50</sup> LGIS states  
8 that it is not owned by a candidate, committee, or party, and Proft similarly asserts that he did  
9 “not have day-to-day control over which news stories are featured in LGIS newspapers.”<sup>51</sup>

10 LGIS further states that the “community newspapers are on-going publications whose  
11 purpose has nothing to do with the past election,” and points to the “hundreds and sometimes  
12 thousands” of local news stories it publishes in a week, including stories on community events  
13 and sports, unrelated to local politics.<sup>52</sup> A review of the newspaper websites found that the

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<sup>47</sup> LGIS Resp., Decl. of D. Proft and Decl. of B. Timpone; LocalLabs Resp. (Nov. 17, 2017), Decl. of D. Proft and Decl. of B. Timpone.

<sup>48</sup> LGIS Resp. at 2. The local community newspapers, however, were already being produced prior to August 2016. See Riopell, *supra* note 16.

<sup>49</sup> LGIS Resp. at 2-3.

<sup>50</sup> *Id.* at 3-6.

<sup>51</sup> *Id.* at 3, Decl. of D. Proft ¶ 1. LGIS further disclaims the Complaint’s allegation that the newspapers do not provide contact information, pointing to email addresses and phone numbers provided on the newspapers’ websites. *Id.* ¶ 5.

<sup>52</sup> *Id.* at 4-5; Ex. A. (examples of published community news).

1 publications have continued to publish local content on their websites beyond the 2016 election,  
2 but it is unclear whether they continue to print and distribute physical copies.<sup>53</sup>

3 LocalLabs argues that it did not make a contribution or expenditure because it only  
4 provided LGIS with content, and did not publish any of that content itself.<sup>54</sup> The LGIS and  
5 LocalLabs Responses clarify the relationship LGIS had with LocalLabs, a for-profit media  
6 corporation that “fills the void” of original community news.<sup>55</sup> LocalLabs explains that though  
7 LGIS creates some original content, it has also contracted with LocalLabs to provide local and  
8 state news in certain geographical areas in Illinois.<sup>56</sup> LocalLabs editors provide the local content  
9 to LGIS for publishing on LGIS’s websites and in print newspapers, but ultimately, LGIS retains  
10 editorial control of the content produced by LocalLabs.<sup>57</sup> LocalLabs does not state whether it  
11 provided LGIS with the Khouri-related content attached to the Complaint.

12 LocalLabs’s Response argues that LocalLabs also falls within the press exemption  
13 because it is a press entity within the meaning of the Act, is not owned or controlled by a  
14 political party, committee, or candidate, and is acting as a press entity when it creates the content  
15 for LGIS’s publications.<sup>58</sup> The response further argues that it did not provide any content

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<sup>53</sup> The Response states that the “format and distribution of the newspaper prior to the federal general election is the same as after the election.” *Id.* at 4, Decl. of D. Profit ¶ 12.

<sup>54</sup> LocalLabs Resp. at 2.

<sup>55</sup> Decl. of B. Timpone ¶¶ 2, 5.

<sup>56</sup> LocalLabs Resp. at 5

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 3.

1 containing express advocacy for or against federal candidates, but, even if it had, such conduct  
2 would not render the entity ineligible for the press exemption.<sup>59</sup>

3 Finally, the Khouri Committee states “unequivocally that the communications in question  
4 made by the Liberty Principles PAC were NOT made in cooperation, consultation or concert  
5 with, or at the request or suggestion of, Tonia Khouri, Khouri for [C]ongress, or their agents.”<sup>60</sup>

6 **III. LEGAL ANALYSIS**

7 If LGIS or Locality Labs are press entities and were acting within the scope of the press  
8 exemption when they published or distributed the *DuPage Policy Journal* communications, their  
9 activities would not be contributions or expenditures under the Act, and therefore would not be  
10 subject to the limitations and requirements of the Act and implementing regulations.

11 Accordingly, we first examine who published or distributed the Khouri articles and then  
12 determine whether the press exemption applies to that entity. Because the record lacks sufficient  
13 information to determine whether the press exemption applies in this scenario, we also evaluate  
14 whether the Khouri articles were coordinated communications as alleged by the Complaint. We  
15 conclude that there is insufficient information to give rise to an inference that the publications  
16 featuring the Khouri quotations were coordinated, and therefore recommend that the  
17 Commission dismiss the allegations that LGIS, LocalLabs, or Liberty Federal PAC coordinated  
18 the content of its publications with the Khouri Committee. Finally, we address whether  
19 Respondents made a contribution in the form of republished campaign materials, and dismiss this  
20 allegation as a matter of prosecutorial discretion.

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<sup>59</sup> *Id.* at 6.

<sup>60</sup> Khouri Comm. Resp. (Nov. 1, 2016) (emphasis in original).



1           **A. There is Insufficient Evidence in the Record to Determine Whether the Press**  
2           **Exemption Applies**

3  
4           The Act and Commission regulations exempt from the definition of “contribution” and  
5 “expenditure” “[a]ny cost incurred in covering or carrying a news story, commentary, or editorial  
6 by any broadcasting station . . . unless the facility is owned or controlled by any political party,  
7 political committee, or candidate . . . .”<sup>61</sup> This exclusion is generally referred to as the “press  
8 exemption” or “media exemption.”<sup>62</sup> A communication subject to this exemption is also exempt  
9 from the Act’s disclosure, disclaimer, and reporting requirements.”<sup>63</sup>

10           To determine whether the press exemption applies, the Commission uses a two-part  
11 test.<sup>64</sup> First, it assesses whether the entity engaged in the challenged activity is a “press entity”  
12 as described by the Act and regulations.<sup>65</sup> Second, if the entity is a press entity, to determine the  
13 scope of the exemption, the Commission examines whether (1) the entity is owned or controlled  
14 by a political party, political committee, or candidate,<sup>66</sup> and (2) whether the entity is acting  
15 within its “legitimate press function” in conducting the challenged activity.<sup>67</sup>

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<sup>61</sup> 11 C.F.R. §§ 100.73, 100.132; *see also* 52 U.S.C. § 30101(9)(B)(i). The Act and Commission regulations define the terms “contribution” and “expenditure” to include the gift of “anything of value” for the purpose of influencing a federal election. 52 U.S.C. §§ 30101(8)(A)(i), 9(A)(i).

<sup>62</sup> Advisory Op. 2010-08 (Citizens United) at 3 (“AO 2010-08”).

<sup>63</sup> AO 2010-08 at 7.

<sup>64</sup> *Id.* at 4; Advisory Op. 2005-16 (Fired Up!) at 4 (“AO 2005-16”).

<sup>65</sup> AO 2010-08 at 4; AO 2005-16 at 4. The Commission has explained that when determining whether the term “press entity” applies, it “has focused on whether the entity in question produces on a regular basis a program that disseminates news stories, commentary, and/or editorials.” AO 2010-08 at 7.

<sup>66</sup> *See* 52 U.S.C. § 30101(9)(B)(i); 11 C.F.R. §§ 100.73, 100.132.

<sup>67</sup> *Reader’s Digest Ass’n. v. FEC*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981).

1 The Commission has recognized that an entity that is otherwise eligible for the press  
2 exemption “would not lose its eligibility merely because of a lack of objectivity in a news story,  
3 commentary, or editorial, even if the news story, commentary, or editorial expressly advocates  
4 the election or defeat of a clearly identified candidate for Federal office.”<sup>68</sup> However, where an  
5 entity is owned or controlled by a political party, political committee, or candidate, the  
6 exemption applies only for costs of news stories that represent “a bona fide news account  
7 communicated in a publication of general circulation . . . [t]hat is part of a general pattern of  
8 campaign-related news account that give reasonably equal coverage to all opposing candidates in  
9 the circulation or listening area[.]”<sup>69</sup>

10 Here, there is insufficient information in the record to determine whether LGIS or  
11 Locality Labs are press entities and were acting within their legitimate press function when they  
12 produced or distributed the Khouri articles. First, the record is incomplete regarding the  
13 ownership of these entities to permit us to determine whether they may be owned or controlled  
14 by a political party, political committee, or candidate. Proft is simultaneously the treasurer of  
15 both the Liberty Federal and State PACs, and part owner of LGIS. Based on the evidence in the  
16 record, it is possible to infer that Proft may have directed significant funding from the Federal  
17 PAC to the State PAC to Newsinator in order to pay for the production and distribution of the  
18 publications at issue. The Responses to the Complaint do not disclose the other owners of LGIS,

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<sup>68</sup> AO 2005-16 at 6; *see also* AO 2010-08 (“While Citizens United’s films may be designed to further its principal purpose as a non-profit advocacy organization, an entity otherwise eligible for the press exemption does not lose its eligibility merely because of a lack of objectivity in a news story, commentary, or editorial.”).

<sup>69</sup> 11 C.F.R. §§ 100.73; 100.132; *see also* Advisory Op. 2005-07 (Mayberry) (concluding that the Act’s limitations applied where a candidate-owned newspaper published commentaries or editorials that were coordinated communications). *Cf.* First Gen. Counsel’s Rpt. at 8, MUR 7163 (Citizens for Joe Miller) (concluding that Restore Liberty, LLC qualified as a press entity, but that the press exemption did not apply under the facts of the case because of the large number of pro-Miller articles and commentaries).

1 though news sources suggest that Timpone, owner of Newsinator and LocalLabs, was also a part  
2 owner of LGIS.

3 The record also raises questions as to whether Proft or Liberty Federal PAC may have, in  
4 fact, exercised control over the publications. Although Proft avers that he did not exercise day-  
5 to-day control of the content that LGIS produced, past versions of the publications' websites  
6 have listed "Liberty Principles PAC," a committee that Proft controls, as funding the  
7 publications.<sup>70</sup> While Liberty State PAC's reports do not show any disbursements to LGIS or  
8 LocalLabs for 2016, they do show over \$300,000 in payments to Newsinator for "advertising –  
9 newspaper" for that year, including after August 2016, when LGIS had already purportedly taken  
10 over the publications.<sup>71</sup>

11 Further, it appears that a large amount of Liberty State PAC's funding has come from  
12 entities controlled by Proft: almost \$2 million in disbursements from Liberty Federal PAC since  
13 2014, \$325,000 in loans from Proft through his non-profit, the Illinois Opportunity Project, and  
14 \$125,000 in loans from Proft's state campaign committee in 2016.<sup>72</sup>

15 Second, there are additional questions regarding whether LGIS and LocalLabs were  
16 acting within their legitimate press function when they produced or distributed the Khouri  
17 articles. The Complaint challenges whether the publications were "part of a regular publishing  
18 routine," or "rather exemplify a short-term communications scheme aimed at influencing

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<sup>70</sup> *Supra* at 6.

<sup>71</sup> Liberty State PAC records show only one disbursement to LocalLabs, dated February 15, 2018, in the amount of \$5,400. See <https://www.elections.il.gov/CampaignDisclosure/ExpendituresSearchByCommittees.aspx>.

<sup>72</sup> *Supra* note 26. "Proft for Governor" made additional loans to Liberty State PAC in 2018 making the total loans from that source come to \$370,000. See <https://www.elections.il.gov/CampaignDisclosure/ContributionsSearchByAllContributions.aspx>.

1 elections in Illinois,” “operat[ing] more like political propaganda.”<sup>73</sup> However, because the  
2 availability of the press exemption is dependent upon the publications’ ownership and control,  
3 which at this stage is unclear, the Commission does not need to reach an examination of whether  
4 the entities were acting within their legitimate press function here.

5 **B. The Commission Dismisses the Allegations that the Respondent Publishers**  
6 **Coordinated with the Khouri Committee**

7  
8 There insufficient information to determine whether the Respondent publishers fall  
9 within the scope of the press exemption. Assuming the exemption does not apply, the next step  
10 is to evaluate whether the Khouri articles appearing in the publications were coordinated  
11 communications as alleged by the Complaint. Communications that are paid for by a third party  
12 and coordinated with a candidate or a candidate’s authorized committee are treated as in-kind  
13 contributions to the candidate.<sup>74</sup> Payments for coordinated communications are therefore subject  
14 to the Act’s contribution limits and source prohibitions, as well as its reporting requirements.<sup>75</sup>  
15 The Commission’s regulations provide a three-part test for determining when a communication  
16 is a coordinated expenditure. A communication must: (1) be paid for by a person other than the  
17 candidate or candidate’s committee; (2) satisfy one or more of five content standards set forth at  
18 11 C.F.R. § 109.21(c); and (3) satisfy one or more of six conduct standards set forth at 11 C.F.R.

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<sup>73</sup> Compl. at 5.

<sup>74</sup> 11 C.F.R. § 109.20(a).

<sup>75</sup> *Id.* §109.21(b); *see also* 52 U.S.C. §§ 30104(b) (reporting requirements), 30116(a)(1) (contribution limits), 30118(a) (source prohibitions); 11 C.F.R. §§ 104.13(a) (disclosure of in-kind contributions), 104.3 (reporting requirements), 110.1(b) (contribution limits). The Act likewise prohibits a candidate or political committee from knowingly accepting contributions in violation of the contribution limits and source prohibitions set forth in the Act. *See* 52 U.S.C. §§ 30116(f); 30118(a).

1 § 109.21(d).<sup>76</sup> Under the Commission's regulations, all three prongs must be satisfied for a  
2 communication to be considered coordinated.<sup>77</sup> The candidate's campaign committee must  
3 report such a coordinated communication as both an in-kind contribution received and as an  
4 expenditure.<sup>78</sup>

5 Here, the publications at issue featuring the Khouri articles were paid for by a third party  
6 — LGIS, LocalLabs, or possibly the Liberty Federal or State PACs. Additionally, the articles  
7 satisfy the content prong of the Commission's coordinated communication regulations because  
8 they are public communications that refer to a clearly identified congressional candidate and  
9 were distributed in that candidate's district within 90 days of the general election.<sup>79</sup>

10 The communications do not, however, appear to satisfy the conduct prong of the  
11 coordinated communications test. The conduct standards include: (1) communications made at  
12 the request or suggestion of the relevant candidate or committee; (2) communications made with  
13 the material involvement of the relevant candidate or committee; (3) communications made after  
14 substantial discussions between the person paying for the communication and the clearly  
15 identified candidate; (4) communications created, produced, or disseminated through the use of a  
16 common vendor; (5) communications paid for by a former employee or independent contractor;

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<sup>76</sup> 11 C.F.R. 109.21(a)-(b).

<sup>77</sup> *Id.*; see also Explanation and Justification, *Coordinated and Independent Expenditures*, 68 Fed. Reg. 421, 453 (Jan. 3, 2003) ("Coordinated and Independent Expenditures E&J").

<sup>78</sup> 11 C.F.R. §§ 109.20(b) and 109.21(b).

<sup>79</sup> 11 C.F.R. §§ 109.21(c)(2), 100.26. As noted *supra*, the articles were dated August 14 and 15, 2016, within 90 days of November 8, 2016, general election.

1 and (6) communications made through the dissemination, distribution, or republication of  
2 campaign materials.<sup>80</sup>

3 The only information the Complaint presents in support of coordination is an alleged  
4 relationship between Proft, treasurer of the Liberty Federal and State PACs and part-owner of  
5 LGIS, and Khouri, a federal candidate. According to the Complaint, Proft's fundraising and  
6 support for Khouri, as well as his attendance at campaign events suggests coordination, but the  
7 available information, without more, fails to support a reasonable inference that Proft's activities,  
8 satisfy the conduct prong. Proft claims that he did not exercise day-to-day control of the  
9 publications, and the Complaint does not provide information to suggest that the LGIS's news  
10 stories were requested by Khouri or her campaign committee, that they were made with material  
11 involvement by Khouri or her committee, or that they were made after substantial discussions  
12 between those parties. The Commission has stated that "a request or suggestion must be based  
13 on specific facts, rather than presumed, to satisfy this conduct standard."<sup>81</sup> Here, however, the  
14 Complaint is speculative in reasoning that, because a Proft-owned publication features a news  
15 article about Khouri, then there must have been some discussion or request or suggestion.<sup>82</sup>  
16 Additionally, the Complaint does not allege, and the available record does not indicate, that the  
17 parties shared a common vendor, former employee, or independent contractor. Because the

<sup>80</sup> *Id.* § 109.21(d)(1)-(6).

<sup>81</sup> Coordinated and Independent Expenditures E&J, 68 Fed. Reg. at 432.

<sup>82</sup> Compare Factual and Legal Analysis at 8-9, MUR 6793 (Steve Stockman for Senate) (stating that conduct prong was satisfied where there was evidence that the candidate personally supervised the publication and distribution of the mailer at issues) with Factual and Legal Analysis at 9, MUR 6613 (Prosperity for MI) (finding dismissal appropriate where although the ads contained similar themes, "the issues presented in the ads are not new criticisms of [the candidate]" and there was no evidence regarding the sharing of information between the parties to satisfy the conduct prong).

1 record contains insufficient information to give rise to a reasonable inference that LGIS,  
2 LocalLabs, or Liberty Federal PAC coordinated the content of its publications with the Khouri  
3 Committee, the Commission dismisses the allegation that the Respondents violated the Act by  
4 making, accepting, or failing to report coordinated communications.<sup>83</sup>

5 **C. The Commission Dismisses the Republication Allegation**

6 Finally, the Complaint alleges that the publications republished campaign materials  
7 featured on Khouri's Facebook page. Under the Act, "the financing by any person of the  
8 dissemination, distribution, or republication, in whole or in part, of any broadcast or any written,  
9 graphic, or other form of campaign materials prepared by the candidate, his campaign  
10 committees, or their authorized agents shall be considered to be an expenditure."<sup>84</sup> The  
11 republication of campaign materials prepared by a candidate's authorized committee is also  
12 "considered a[n in-kind] contribution for the purposes of contribution limitations and reporting  
13 responsibilities of the person making the expenditure,"<sup>85</sup> because the person financing the

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<sup>83</sup> The Complaint does not allege that the Khouri news articles featured in the publications constitute independent expenditures pursuant to 11 C.F.R. § 100.16(a). Further, our review of the mailers reveal no instance in which the publications expressly advocate the election of Khouri. See 11 C.F.R. § 100.22(a), (b). Here, though the articles referencing Khouri are undoubtedly favorable to her, they do not contain verbs expressly urging voter action. Additionally, reasonable minds could differ as to whether the articles encourage Khouri's election or instead merely provide coverage of her campaign statements consistent with the publications' role as providers of local news. If the articles were to be considered independent expenditures, the payor would have been required to file an independent expenditure report disclosing the activity. See 52 U.S.C. § 30104(c).

<sup>84</sup> 52 U.S.C. § 30116(a)(7)(B)(iii).

<sup>85</sup> 11 C.F.R. § 109.23(a).

1 communication “has provided something of value to the candidate [or] authorized committee.”<sup>86</sup>  
2 The Commission has determined that republication, *even in part*, constitutes a benefit to the  
3 campaign.<sup>87</sup> The candidate who prepared the campaign material does not receive or accept an  
4 in-kind contribution, and is not required to report an expenditure, unless the dissemination,  
5 distribution, or republication of campaign materials is a coordinated communication under  
6 Commission regulations.<sup>88</sup>

7 The Commission’s regulations set forth exceptions to the republication provision when,  
8 *inter alia*, “the campaign material is disseminated, distributed, or republished in a news story,  
9 commentary, or editorial” exempted under the press exemption or “the campaign material used  
10 consists of a brief quote of materials that demonstrate a candidate’s position as part of a person’s  
11 expression of its own views.”<sup>89</sup>

12 Here, the publications disseminated quotes by the candidate from materials previously  
13 published on Khouri’s Facebook page. In one article, titled “Tonia Khouri criticizes Obama  
14 administration for sending \$400 million to Iran,” the *DuPage Policy Journal* quotes in full a  
15 brief, two paragraph commentary that Khouri (or her committee) published on her Facebook  
16 account in response to a news story regarding the Iran deal. In the other article, “Pondering her

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<sup>86</sup> Coordinated and Independent Expenditures E&J, 68 Fed. Reg. at 442. As the Commission has explained, “Congress has addressed republication of campaign material through [52 U.S.C. § 30116(a)(7)(B)(iii)] in a context where the candidate/author generally views the republication of his or her campaign materials, *even in part*, as a benefit” and “can be reasonably construed only as for the purpose of influencing an election.” *Id.* at 443 (emphasis added); see also Coordinated Communications, 71 Fed. Reg. 33,190, 33,191 (Jun. 8, 2006) (communications “that disseminate, distribute, or republish campaign materials, no matter when such communications are made, can be reasonably construed only as for the purpose of influencing an election”).

<sup>87</sup> Coordinated and Independent Expenditures E&J, 68 Fed. Reg. at 442-43.

<sup>88</sup> 11 C.F.R. § 109.23(a).

<sup>89</sup> 11 C.F.R. § 109.23(b)(3)-(4).



1 children’s future prompts Khouri’s congressional run,” the publication quotes from a video  
2 published on Khouri’s website and linked to her Facebook account. That article, however, also  
3 includes additional content regarding the race and Khouri’s background interspersed throughout  
4 the article between those direct quotes.<sup>90</sup>

5 The Commission dismisses the republication allegation under *Heckler v. Chaney* on the  
6 grounds of prosecutorial discretion, in light of the circumstances presented here, including: the  
7 fact that it is unclear whether the press exemption should apply to the entities that published the  
8 article (as analyzed above), the possibility that the “brief quote” exemption may apply, and that  
9 the cost of the republications was likely relatively modest and does not warrant the use of further  
10 Commission resources.<sup>91</sup>

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<sup>90</sup> That article also includes a headshot of Khouri that was once featured on her Facebook page. See <https://www.facebook.com/toniakhouri/photos/a.290544000982171/866933746676524/?type=3&theater>.

<sup>91</sup> See *Heckler v. Chaney*, 470 U.S. 821, 831 (1985). As discussed in detail above, it is unclear whether LGIS or LocalLabs are press entities, and thus we cannot reach a conclusion as to whether Respondents were acting within the scope of the press exemption set out in 11 C.F.R § 109.23(b)(3) when they published Khouri’s quotes.