FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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JUL 3 1 2019

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RE: MUR 7148
Local Government Information Services, Inc.

Dear Ms. Abegg:

On October 14, 2016, the Federal Election Commission (the "Commission") notified your client of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended. On July 23, 2019, the Commission decided to dismiss the allegation that Local Government Information Services, Inc., violated 52 U.S.C. §§ 30116(a) or 30118(a) by making coordinated communications or by republishing campaign materials. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Ana Peña-Wallace, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Mark Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Liberty Principles PAC, Inc. and 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

MUR 7148

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,

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

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

[1] *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

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II. FACTUAL SUMMARY

A. Background

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

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

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[2] 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.

[3] Tonia Khouri, FEC Form 2, *Statement of Candidacy* (Apr. 9, 2015).

[4] Khouri for Congress, FEC Form 1, *Statement of Organization* (Apr. 9, 2015).

[5] *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=%2b4la1MRZw9IXmWg5HV9wmg%3d%3d.

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

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

1 "which advocates for free market public policy solutions."[8] According to the Complaint, Proft
2 raised money for Khouri's 2016 candidacy and attended campaign events.[9]
3 Proft 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."[10] 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*.[11] LGIS was an active corporation during the
8 2016 election cycle, but has been in "dissolved" status since January 11, 2019.[12]
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.[13] LocalLabs provides

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

9 Compl. at 7-8.

10 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).

11 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 (last accessed May 31, 2019).

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

13 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

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

The websites for the individual LGIS publications, including the *DuPage Policy Journal*, currently state that they are "a product of LGIS – Local Government Information System" and that they are funded "in part, by advocacy groups who share our beliefs in limited government."[17] Before the fall of 2016, most of the websites for these same publications did not 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/.

[14] LocalLabs Resp., Decl. B. Timpone ¶¶ 7-8.

[15] *Id.* ¶ 1.

[16] 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. 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/.

[17] *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."[18]

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.[19] 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.[20] In the 2016 election cycle, Liberty Federal PAC reported
9 only one disbursement: a $15,000 disbursement to Liberty State PAC.[21] 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.[22] In 2016, Liberty Federal PAC reported no receipts,

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18 *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.

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

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

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

22 *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.[23]

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.[24]
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.[25] 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.[26] 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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[23] 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.

[24] *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=lTGV5m%2bSOpFSApzT5ynUMQ%3d%3d&pageindex=Iir0i4Uzc3E%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.

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

[26] *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).

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1 candidates."[27] 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.[28]
5 Attorney Christine Svenson, who represented Liberty State PAC before the state board of
6 elections, is also the registered agent for LGIS.[29]

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.[30] 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.[31] 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.[32]

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

28 *Id.; see also* Regular Meeting Minutes (Mar. 14, 2016), Ill. State Bd. of Elections, https://www.elections.il.gov/downloads/aboutthebboard/pdf/03_14_16minutes.pdf.

29 Regular Meeting Minutes for June 19, 2018, Ill. State Bd. of Elections, https://www.elections.il.gov/downloads/aboutthebboard/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).

30 Compl. at 1-2.

31 *Id.* 1-2, 4.

32 *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).

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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.[33] 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.[34] 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.[35]
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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[33] Compl. Ex. A.

[34] 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/.

[35] *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.

- The publications only recently began distribution, "appearing in voter's mailboxes 'just in time for the primary' elections in Illinois."[36]

- The publications' coverage of local government news are merely reproductions "of information already made available to the public, like meeting agendas."[37]

- The publications quote directly from Khouri's website and Facebook page, republishing and distributing campaign materials to readers.[38]

- The General Counsel of the Illinois Press Association publicly challenged the legitimacy of the publishers as press entities.[39]

- The publications do not include a mailing address or phone number, and give "'readers no information about who runs it' other than an email address and Twitter account."[40]

- Recipients of the publications received copies without subscribing, and copies were left in high traffic areas for free.[41]

- Recipients of the publications have filed complaints with the Illinois State Board of Elections, "asking for an investigation into these 'faux newspapers.' "[42]

- The publications are controlled by a federal political committee, Liberty Principles PAC, and the PAC's treasurer, Proft, has publicly taken credit for distributing these publications, that he says are "designed to cover issues ignored by other media and also to influence policy and elections."[43]

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36 Compl. at 4 (quoting Spinner, *supra* note 16).

37 *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/).

38 *See* Compl. at 7, Ex. A.

39 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_612fbdcc-e4a4-57ca-a070-217b831ae110.html).

40 *Id.* (quoting Miller, *supra* note 39).

41 *Id.*

42 *Id.* (quoting Collins, *supra* note 41).

43 *Id.* at 6 (quoting Spinner, *supra* note16)

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

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

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[44] *Id.* at 6-7

[45] *Id.* at 7-8.

[46] Liberty Federal PAC Resp. (Nov. 17, 2016), Decl. of D. Proft ¶¶ 3-4.

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1 LGIS and LocalLabs submitted separate, but similar, Responses to the Complaint. Each
2 Response attaches the same declarations from Proft and Timpone.[47] LGIS states that it has
3 produced the weekly community newspapers, including the *Du Page Policy Journal*, since it
4 incorporated in August 2016,[48] 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.[49] 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.[50] 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."[51]
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.[52] A review of the newspaper websites found that the

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[47] 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.

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

[49] LGIS Resp. at 2-3.

[50] *Id.* at 3-6.

[51] *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.

[52] *Id.* at 4-5; Ex. A. (examples of published community news).

publications have continued to publish local content on their websites beyond the 2016 election, but it is unclear whether they continue to print and distribute physical copies.[53]

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

LocalLabs's Response argues that LocalLabs also falls within the press exemption because it is a press entity within the meaning of the Act, is not owned or controlled by a political party, committee, or candidate, and is acting as a press entity when it creates the content for LGIS's publications.[58] The response further argues that it did not provide any content

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[53] 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.

[54] LocalLabs Resp. at 2.

[55] Decl. of B. Timpone ¶¶ 2, 5.

[56] LocalLabs Resp. at 5.

[57] *Id.*

[58] *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.[59]

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."[60]

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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59 *Id.* at 6.

60 Khouri Comm. Resp. (Nov. 1, 2016) (emphasis in original).

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

The Act and Commission regulations exempt from the definition of "contribution" and "expenditure" "[a]ny cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station . . . unless the facility is owned or controlled by any political party, political committee, or candidate . . . ."[61] This exclusion is generally referred to as the "press exemption" or "media exemption."[62] A communication subject to this exemption is also exempt from the Act's disclosure, disclaimer, and reporting requirements."[63]

To determine whether the press exemption applies, the Commission uses a two-part test.[64] First, it assesses whether the entity engaged in the challenged activity is a "press entity" as described by the Act and regulations.[65] Second, if the entity is a press entity, to determine the scope of the exemption, the Commission examines whether (1) the entity is owned or controlled by a political party, political committee, or candidate,[66] and (2) whether the entity is acting within its "legitimate press function" in conducting the challenged activity.[67]

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[61] 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).

[62] Advisory Op. 2010-08 (Citizens United) at 3 ("AO 2010-08").

[63] *Id.* at 7.

[64] *Id.* at 4; Advisory Op. 2005-16 (Fired Up!) at 4 ("AO 2005-16").

[65] 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.

[66] *See* 52 U.S.C. § 30101(9)(B)(i); 11 C.F.R. §§ 100.73, 100.132.

[67] *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."[68] 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[.]"[69]

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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[68] 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.").

[69] 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).

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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.[70] 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.[71]

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.[72]

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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[70] *Supra* at 5-6, 12.

[71] 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.

[72] *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.

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elections in Illinois," "operat[ing] more like political propaganda."[73] However, because the availability of the press exemption is dependent upon the publications' ownership and control, which at this stage is unclear, the Commission does not need to reach an examination of whether the entities were acting within their legitimate press function here.

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

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

[73] Compl. at 5.

[74] 11 C.F.R. § 109.21(b).

[75] *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).

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

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.[79]

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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[76] 11 C.F.R. 109.21(a)-(b).

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

[78] 11 C.F.R. §§ 109.20(b) and 109.21(b).

[79] 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 the November 8, 2016, general election.

and (6) communications made through the dissemination, distribution, or republication of campaign materials.[80]

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

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80 *Id.* § 109.21(d)(1)- (6).

81 Coordinated and Independent Expenditures E&J, 68 Fed. Reg. at 432.

82 *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).

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

C. The Commission Dismisses the Republication Allegation

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

[83] 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).

[84] 52 U.S.C. § 30116(a)(7)(B)(iii).

[85] 11 C.F.R. § 109.23(a).

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1 communication "has provided something of value to the candidate [or] authorized committee."[86]
2 The Commission has determined that republication, *even in part*, constitutes a benefit to the
3 campaign.[87] The candidate who prepared the campaign material does not receive or accept an in-
4 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.[88]

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."[89]

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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86 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").

87 Coordination and Independent Expenditures E&J, 68 Fed. Reg. at 442-43.

88 11 C.F.R. § 109.23(a).

89 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.[90]

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 amount at issue was likely relatively modest and does not warrant the use of further
10 Commission resources.[91]

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[90] 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.

[91] *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.