

**IN AND BEFORE THE
FEDERAL ELECTION COMMISSION**

In Re: Friends of Frank Guinta and Richard Springer)
in his personal capacity as Treasurer)
and Frank Guinta, Respondents) **MUR 6363 and 6440**
)
)

**Response to Request for Materials and
Motion to Dismiss Matter(s) Under Review**

The Federal Election Commission ("FEC" or "the Commission") has notified Friends of Frank Guinta, Richard Springer in his personal capacity as Treasurer and Frank Guinta ("Rep. Guinta"), (collectively hereafter "Respondents") of its finding that there is Reason to Believe that a violation of the Federal Election Campaign Act of 1971, as amended ("FECA" or "the Act") has occurred. The Commission now seeks additional information regarding the facts involved in Matters Under Review 6363 and 6440 ("the MURs").

Respondents submit the enclosed factual information and legal authorities which clearly demonstrate that there is no probable cause to believe a violation of the Act has occurred.

Under the laws of the states of New Jersey and New Hampshire (the two states in which Respondent Frank Guinta has resided during his lifetime), the funds at issue in the MURs were / are his personal funds under the legal authorities of those jurisdictions involving creation of a constructive trust in his name regarding the funds. The requirements of 2 U.S.C. §431a(26) for 'personal funds' used by the candidate to support his campaign are satisfied by the facts in this case.

The funds were and are his personal funds, even if not subject to reporting and disclosure under the Ethics in Government Act of 1978, as amended, because the funds were not 'held' in his name.

The reporting obligations for financial disclosure by candidates for the House of Representatives are separate and distinct from the definition of 'personal funds' under the Act.

As more fully outlined below, Respondents have not violated any provision of the Act and the MURs should be dismissed.

FACTUAL SUMMARY / OVERVIEW

While running for the US House of Representatives in the 2010 election cycle, Respondent Frank Guinta received funds withdrawn from certain funds held in the name of his parents, Richard and Virginia Guinta and loaned some of those funds to Respondent Friends of Frank Guinta, the principal authorized campaign committee of Frank Guinta as candidate for the US House of Representatives. These funds, one in an account at a national bank (Bank of

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America) and other assets held in a wealth management firm, while maintained under Rep. Guinta's parents' names, constituted funds that belonged to him and which were available to him under FECA to loan / contribute to his campaign for federal office.

The Guinta family, with Rep. Guinta's involvement over many years, accumulated funds including cash, real estate and other assets, referred to collectively by Rep. Guinta and his parents (primarily his mother, Virginia Guinta) as the family "pot". Rep. Guinta had been free to not only direct the investments of the family pot, but also to access and control a significant share of the funds held in the family pot for nearly twenty (20) years prior to his candidacy. Thus, Rep. Guinta's statements to the media regarding his role in 'earning' the funds that were the underlying source of his campaign loans were entirely accurate.

Rep. Guinta had personally contributed over \$100,000 to the development of the family "pot" over the course of his lifetime, beginning when certain assets of his during his childhood were deposited into the family pot and which (measured under historical return analyses) would have been valued in excess of \$500,000 at the time of his candidacy. In addition, funds were regularly available to him (and his siblings) over the years from the family pot for their personal needs and expenses, such as mortgage and credit card bills. Thus, Rep. Guinta's withdrawal of money from the pot to use for his campaign was simply a continuation of a lifelong pattern of his contributing to, developing and growing, then accessing and controlling money that was held in his parents' name, but which rightfully and legally belonged to him.

Under FECA, money that Rep. Guinta had a right to access and control, and money to which Rep. Guinta had an equitable claim of right under state law, constituted Rep. Guinta's "personal funds." Therefore, both the letter and spirit of FECA gave Rep. Guinta every right to use his share of the family pot as his personal funds in his congressional campaign.

Rep. Guinta did not list the family pot on his House of Representatives candidate financial disclosure statement. This omission was also proper. The instructions to the Form B, candidate's personal financial disclosure report advises candidates to disclose assets "held by you, your spouse, or a dependent child." The form does not call for disclosure of bank accounts commingled among parents and siblings, not established formally as a legal 'trust', nor does it call for disclosure of all funds or assets that could be considered "personal funds" under FECA.

Rep. Guinta's receipt and use of his personal funds from the family pot were in full compliance with FECA and FEC regulations and his initial omission of the Bank of America account on his candidate personal financial disclosure report was also proper under the provisions of the Ethics in Government Act of 1978 .

Additionally, the only constitutional basis for regulation under FECA is to prevent corruption or the appearance of corruption. The facts demonstrate that the funds at issue were intra-family transfers solely from a family pot which was neither established, created or managed in any way to circumvent FECA. No third parties were involved and there is not a single fact present to suggest there was corruption, an appearance of corruption or any intent to violate FECA or any other law or regulation. Absent corruption or the appearance of corruption, the provisions of FECA, as applied to the facts in this case, are unenforceable.

For all of these reasons, we respectfully request that the MURs be dismissed.

The Guinta Family 'Pot'

Richard and Virginia Guinta have three adult children: two sons, Frank and Eric, and a daughter, Christine. The family is close-knit and, over the years, the parents developed a family pot into which they added funds and assets as a collective financial resource for the family. As Rep. Guinta entered his teenage years, he and his mother collaborated to invest and grow what the parents have often characterized as a family "pot," accessible in common to members of the family when needs arise. Since the children were young, Richard and Virginia placed some of the pot into investment accounts as well as into real estate.

The Guinta children have regularly used the shared family resources for personal expenses. Significantly,

, and substantial funds (including monthly payments of approximately \$4,500 for over a year, between 2003 and 2005) have been drawn from the family pot to pay for his treatment. However, the family pot is not simply an "emergency" account; rather, it has regularly been used for day-to-day living expenses. Although Eric and Christine have not been actively involved in managing the pot or making investment decisions as Rep. Guinta has done for a number of years, they both currently live in (and act as owners of) homes titled in their parents' names that were paid for out of the family pot. Prior to launching his campaign for United States House of Representatives, Rep. Guinta repeatedly had drawn upon the family pot for certain expenses.

Both because he is the eldest child and also because of his interest from a very young age in finance and investments, Rep. Guinta assumed a unique leadership role in the family's financial and investment decisions, starting in his teenage years, and his parents accordingly relied on him to a considerable extent. As a teenager, he started working for the company which was eventually sold to Michael Bloomberg. He became familiar with stocks and bonds, and he began to suggest investments to his parents. Thus, while Rep. Guinta was still a teenager (in or around 1987), his parents set aside \$25,000 and asked him to invest it for his benefit and for the benefit of his siblings; the goal was to make \$1 million for each of the three Guinta children. Before college, Rep. Guinta advised his parents on how to invest this sum, as well as on their general financial affairs. After graduating from college, Rep. Guinta was authorized to trade directly in the family accounts. Rep. Guinta accepted this responsibility actively; there were periods when Rep. Guinta would spend hours each day trading stocks for the benefit of the family. While Rep. Guinta's role in the day-to-day management of the family pot decreased after his marriage, he remains to this day involved in advising his parents on investments and other financial decisions with regard to the family pot.

Rep. Guinta's Funds Commingled Into the Family Pot

In addition to advising the family on the management of the pot, at least \$100,000 of Rep. Guinta's own money was commingled into the pot by Rep. Guinta's parents at various times when he was a child and young adult. Rep. Guinta's own money included amounts that he received as gifts, property set aside for him in his own name, as well as a personal injury settlement. Even though it is difficult to reconstruct every gift and set-aside made to Rep. Guinta during his youth, we have been successful so far in identifying substantial gifts and set-asides —

based on documents attached to this submission — which account for at least \$100,000 of the family pot. We are also confident that additional gifts and set-asides would come to light with more time. Rep. Guinta recalls, for example, that there were also municipal bonds held on his behalf when he was young, although we have not yet been able to locate this documentation.

Nevertheless, at present, we have identified the following monies, all held in Rep. Guinta's name or on his behalf, which were eventually merged into the Guinta family pot:¹

Date	Amount	Description
4/10/1980	\$2,239.82	City Federal Savings Passbook, for "M. Virginia Guinta ITF [in trust for] Frank C. Guinta." Original deposit is from 1973, at 7% per annum, maturity of 9/25/1977. The account itself appears to continue until 1980. Although there are withdrawals in 1980, the maximum amount in the account appears to have been \$2,239.82. FL-000001-FL-000004.
10/11/1985	\$1,082.50	Perth Amboy Savings Institution Passbook # . Savings account of "M. Virginia Guinta, Cust. For: Frank C. Guinta." The contents of this account became part of the pot. The numbers on the copies available to us are not legible, but the sum is apparent on the original. FL-000005-FL-000006.
5/7/1987	\$13,270.44	Montgomery National Bank CD, Account No. . The CD was a 30-month CD maturing on May 7, 1987. The maturity notice is addressed to "M V Guinta C/F Frank C. Guinta." A check from Anchor Bank used to purchase the CD (in the amount of \$7,928.26) also identifies Virginia Guinta as "cust for" Frank C. Guinta. When this CD was liquidated, the proceeds became part of the pot. FL-000007-FL-000009.
10/5/1987	\$4,250	This sum was received from Montgomery Township High School as payment for personal injuries sustained by Frank Guinta. The release was executed by Richard Guinta, as guardian ad litem of Frank Guinta. These funds became part of the pot. FL-000010-FL-000013.
8/30/1991	\$20,000	Real property (Lot 31) purchased in the township of Stafford, NJ, by Richard and Virginia Guinta "in trust for Frank Guinta" in 1974. The property was sold by a deed dated August 30, 1991, for \$20,000. The deed of sale is signed by Rep. Guinta and his parents. The proceeds of this sale became part of the pot. FL-000014-FL-000016.
11/18/1991	\$25,801.77	Virginia Beach Federal Savings Bank CD, Account No. . The account is for "M Virginia Guinta Cust Frank C.

¹ Copies of all documents included on this chart are attached hereto as Exhibits to this submission.

		Guinta." According to the Certificate of Deposit Summary as of 12/31/1991, the CD was closed out on 11/18/1991. The proceeds became part of the pot. FL-000017.
5/24/1993	\$9,013.56	Amboy National Bank 12-month. The CD matured on May 24, 1993. The maturity notice is addressed to "M Virginia Guinta C/F Frank C Guinta." The proceeds became part of the pot. FL-000018-FL-000019.
9/17/1993	\$1,190.64	United Jersey bank account for "M Virginia Guinta Custodian For Frank C Guinta UTMA." UTMA is "Uniform Transfers to Minors Act." Account no. is . FL-000020.
9/28/1993	\$19,500	Real property (Lot 30) purchased in the township of Stafford, NJ, by Richard and Virginia Guinta "in trust for Frank Guinta" in 1974. The property was sold by a deed dated September 28, 1993, for \$19,500. The deed of sale is signed by Rep. Guinta and his parents. The proceeds of this sale became part of the pot. FL-000021-FL-000023.
5/5/1994	\$3,683.94	United Jersey bank account for "M Virginia Guinta Custodian for Frank C Guinta UTMA." Account No. is . FL-000024.
Unk.	Unk.	Rep. Guinta's maternal grandfather, Henry Chodowski, set aside shares of Singer Company common stock for Rep. Guinta. This stock was sold at some point between 1987 and 1991, and the proceeds joined together with the pot. Rep. Guinta's interest in Singer Company stock is reflected in his 1987 tax return, which includes dividend income from Singer Co. FL-000025-FL-000029.

Respondents have made a reasonable effort consistent with the documentary record to avoid double-counting Rep. Guinta's contributions; thus, for example, where documents have been located suggesting that the Montgomery National Bank CD was paid for with a check drawn on funds kept in a separate savings account for Rep. Guinta at Anchor Bank, that account has been excluded from this list. (See FL-000009.)

In any event, together, even *without* taking into account increases in value due to interest and investment (which, of course, one must), the documents identified to date reveal that \$100,032.67 of Rep. Guinta's funds were contributed into the family pot by his parents.

In addition, the value of Rep. Guinta's Singer Company stock is unknown, but we understand that when this stock was sold, the proceeds were also commingled into the pot. Rep. Guinta further believes that additional custodial or trust accounts existed when he was a child, which held municipal bonds in his name, and that these funds, too, were commingled into the pot. Finally, we have not yet located the statements for the original Anchor Bank account; however, it is possible that additional funds were kept in that account and were commingled into the pot at a later time. Since supporting documentation confirming the value of the Singer Company stock has yet to be located, it is excluded any estimate of these assets from the calculations.

Utilizing a market return to estimate a floor on the total increase in Rep. Guinta's contributions to the family pot demonstrates the minimum growth in the valuation of the family pot. The Dow Jones Industrial Average grew from about 800 at the start of 1980 — the date of Rep. Guinta's earliest contribution to the pot — to about 12,000 today. Calculating the Dow's appreciation from the date of each contribution to present suggests that Rep. Guinta's contributions to the family pot would have appreciated to approximately \$430,000 at the present day, well in excess of the \$355,000 that he loaned to his campaign.

This estimate is based only on the documented contributions of known value that have been located to date, in a relatively short period of time. It also — and this is quite significant — does not take into account the above-market returns that the Guinta family has enjoyed over the course of the past three decades. In light of the family's history of above-average returns, however, it is estimated that a more accurate calculation of the increase in the value of Rep. Guinta's known and documented contributions and resulting proportionate interest would yield an equitable interest in the pot in excess of \$500,000.

This too is a conservative measure of Rep. Guinta's equitable interest in the pot, as it does not include the as-yet undocumented sums from the Singer Company stock and any other investments held in Rep. Guinta's name which may have been commingled into the pot when he was a child or young adult. The true measure of his equitable interest is likely considerably greater.

It must be stressed that these calculations reflect the *ex post facto* estimations of counsel, after a thorough and still on-going investigation, by locating documents and records and reconstructing account information spanning several decades. The Guinta family, to be clear, did not think of the family pot in such formalistic terms. The family does not compartmentalize one child's interest to the exclusion of any other child's interest. To the contrary, the pot is and has always been thought of as a shared family resource kept in common for all of the family members.

Finally, it should be noted that there is no evidence to suggest any direct link between the amounts listed above and the \$25,000 which Rep. Guinta was asked to invest for himself and for his siblings. Although that investment sum likely became a component of the pot, it is not synonymous with the family pot, and we are not aware of any evidence to suggest that that sum was drawn exclusively from Rep. Guinta's money which had been commingled into the pot.

Rep. Guinta's Control Over the Family Pot

As described above, the Guinta family pot has enjoyed above-market returns over the course of the past three decades. This was due in no small part to Rep. Guinta's efforts to grow the pot for his family. As mentioned, while still a teenager, Rep. Guinta was asked to invest \$25,000 for his benefit and the benefit of his siblings. The proceeds of that initial \$25,000

were eventually deposited into two accounts at Olde Discount Brokerage²: one account in the name of Virginia Guinta, and another account in the name of Richard Guinta. Rep. Guinta had access to and considerable involvement with these accounts. Specifically, we have identified and produced the following documents:

- A **June 12, 1997 Trading Authorization** for Virginia Guinta's account (), attesting to Rep. Guinta's power to execute trades in her Olde Discount account. FL-000030.
- Two notarized forms labeled "**Request to Journal Funds and/or Securities**" dated February 16, 1999. One is signed by Rep. Guinta and Virginia Guinta, and relates to Olde Discount account ; the other is signed by Rep. Guinta and Richard Guinta, and relates to Olde Discount account .. FL-000031-FL-000035.

This was not Rep. Guinta's *only* involvement in the management of the pot, however. It is simply illustrative of his access. His parents regularly consulted Rep. Guinta for advice on the family's other investments, including their real property investments. At times, he would spend hours not only managing the equity investments, but also planning how best to invest the family's wealth in other areas. Separately, Rep. Guinta was intimately involved in planning how the family would handle its medical expenses, Over time, Rep. Guinta's involvement in the day-to-day management of the family pot decreased. However, he continues to this day to be involved in the family's financial decision-making.

Of the three Guinta siblings, Rep. Guinta is the one who has shown an interest in, capacity for and inclination to manage and invest the family's money. Whereas Rep. Guinta was active and interested at a young age in matters of his family's money, his other siblings have been engaged in it not at all.

Rep. Guinta's Access To the Family Pot

In November 2000, Frank Guinta was elected to the New Hampshire House of Representatives. In 2001, he was elected Alderman of Ward 3 in Manchester, New Hampshire. He was reelected to second terms of both offices in 2002 and 2003, respectively. In 2005, he launched a campaign for mayor of Manchester, and in November 2005, he won that election. He was reelected to a second term as mayor in 2007. In 2009, he announced his candidacy for the United States House of Representatives, and in November 2010, he was elected to that office.

Well before becoming a candidate for Congress, Rep. Guinta had repeatedly drawn from the family accounts for personal uses. For example, on August 23, 2001, Rep.

² When Olde Discount was acquired by H&R Block, the account transferred to H&R Block. Subsequently, it was transferred to A.G. Edwards, and then to LPL Financial. More recently, in 2010 and 2011, substantial funds have been moved from LPL Financial to Schwab.

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Guinta and his wife Morgan Guinta requested Virginia Guinta to write two checks totaling \$14,050, which Rep. Guinta and Morgan used for a deposit on the purchase of a house.³ On September 6, 2004, Rep. Guinta withdrew \$1,000 from the pot. On June 10, 2005, June 17, 2005, and June 23, 2005, Rep. Guinta withdrew three checks, one for \$4,000 and two for \$2,000, each with a memo line indicating the money was used on a property that Rep. Guinta held. In 2005, he also used at least \$30,000 from the pot for his mayoral campaign. Later, in August of 2008, he used funds from the pot to pay off over \$4,000 in credit card bills. He made use of the pot on many other occasions over the years as well, most recently in 2010 to pay his mortgages on two properties (Youville and Crestview).

It must be noted that two of Rep. Guinta's major life expenses – his undergraduate tuition and his graduate school⁴ tuition – were not paid for out of the family pot. Rather than liquidate the investments that were in the pot, the Guintas used the income Virginia Guinta earned while Rep. Guinta was attending college to pay for his undergraduate tuition.⁵ Later, when Rep. Guinta enrolled in graduate school, he paid for his education with student loans that offered highly favorable, interest-deferred terms. As such, neither his college nor undergraduate tuition can be thought of as disbursements from the family pot; thus, there should be no 'deduction' from Rep. Guinta's share of the family pot for his education expenses because those were not drawn from the pot.

Rep. Guinta's Loans to His Congressional Campaign Committee Were from Personal Funds

When deciding to run for Congress, Rep. Guinta anticipated having to spend from his personal funds \$500,000 from his share of the family pot. In the end, Rep. Guinta spent only \$355,000 from his share of the family pot and which he knew and counted on as being available to him for his Congressional campaign. After commencing his candidacy for the U.S. House of Representatives, Rep. Guinta made a series of withdrawals from the family pot to use as loans to his Congressional campaign committee. Rep. Guinta's loans to Friends of Frank Guinta eventually totaled \$355,000⁶. A table of Rep. Guinta's loans⁷ to his campaign follows:

³ Because the family pot is in accounts held under his parents' names, Rep. Guinta makes draws on the family pot by requesting Virginia Guinta to sign a check for the amount(s) needed. Hereinafter, such transactions will be described as Rep. Guinta making a withdrawal from the family pot.

⁴ Rep. Guinta earned a Master's Degree in Intellectual Property from the Franklin Pierce Law Center (now the University of New Hampshire School of Law). Rep. Guinta did not obtain a J.D. degree, nor has he ever practiced law.

⁵ The family generally lived off of Richard Guinta's income at the time, and used Virginia Guinta's income for expenses like college.

⁶ Rep. Guinta has requested copies of the bank statements for the time period from June 2009 through October 2010 in order to provide to the Commission the requested documentation of the loans referenced in the chart. However, the bank statement(s) for those time period have not yet been received from the bank, even though they have been ordered. For purposes of this submission, Rep. Guinta freely acknowledges that the source of the funds used to make the campaign loans were from the family pot, including the Bank of America account and the LPL Financial investment funds held in his parents' names.

Rep. Guinta Loans to Friends of Frank Guinta

Date	Amount
6/30/2009	\$20,000
3/28/2010	\$100,000
6/27/2010	\$125,000
9/3/2010	\$60,000
9/10/2010	\$50,000

Rep. Guinta made loans to his campaign as they were needed by the campaign, over a period of fifteen months. The first three loans were made to the campaign just before the end of the campaign's quarterly reporting periods in June 2009, March 2010, and June 2010. The hotly contested primary in mid-September 2010 required an additional \$110,000 in funding from Rep. Guinta's personal funds. Rep. Guinta, as any candidate, would not and did not personally fund his campaign for more than the amount(s) needed at any given time to either demonstrate a desired cash on hand amount or to pay for media or voter contact preceding the election. The procedure he followed was in keeping with standard practice for other candidates contributing to their own campaigns. Rep. Guinta obtained the funds first from the family pot and then managed disbursements to the campaign directly from his own accounts as needed for campaign purposes.

Rep. Guinta Correctly Completed His Candidate Financial Disclosure Reports

On May 15, 2010, after declaring his candidacy for the United States House of Representatives, Rep. Guinta submitted his House Candidate's Personal Financial Disclosure Report. Per the form's instructions, Rep. Guinta identified and disclosed a number of bank accounts, stocks, and mutual funds held by himself and his wife. Rep. Guinta did not disclose his share of the family pot, however, as those funds were not "held" by himself or his wife as directed specifically by the instructions to House candidates completing the form.

Prompted by questions from one of Guinta's fellow candidates for the Republican Party nomination, on July 23, 2010, Guinta filed an amended Financial Disclosure Statement, which identified the family account at Bank of America with a stated value of between \$250,001 and \$500,000. The House Committee on Standards of Official Conduct reviewed Rep. Guinta's financial statement and amendment, and on December 15, 2011, concluded that Rep. Guinta's financial disclosure and subsequent amendment were "in substantial compliance" with the personal financial disclosure obligation(s) of House candidates.

⁷ Under the provisions of 2 U.S.C. § 441a(j) and 11 C.F.R. § 116.11(c), the maximum loan that can be repaid to a candidate after twenty days following an election is \$250,000. Thus, \$105,000 of Rep. Guinta's loans to his campaign were converted by operation of law to a contribution.

Argument

**Further Enforcement Proceedings In This Case
Would be Contrary to Law**

In light of the facts detailed above, further investigation into Rep. Guinta and his family's finances would be contrary to law for several reasons. First, the funds that Rep. Guinta lent to his campaign consisted of "personal funds" both within the plain meaning of the term and within its defined meaning under FECA. Second, even supposing for sake of argument that the loan constituted a contribution from Rep. Guinta's parents rather than an expenditure of his own personal funds, the prohibition of such a contribution is of dubious constitutional validity inasmuch as the intra-family transfer at issue does not present any indicia of corruption or the appearance of corruption. Third, Rep. Guinta completed his financial disclosure statement accurately according to the form's instructions. Neither Rep. Guinta nor his family harbored the requisite intent to "knowingly and willfully" violate the law and no violation of FECA has occurred.

Accordingly, we respectfully request the FEC to dismiss the MURs.

1. **Funds that Rep. Guinta Contributed to a Family Pot Are His "Personal Funds."**

The money that Rep. Guinta loaned to his campaign was his own money. As a child, Rep. Guinta's parents pooled various assets that he had received as gifts, assets that had been set aside for Rep. Guinta in his own name, as well as a personal injury settlement, into a commingled family pot. The family did not keep tabs of which dollars in the pot were Rep. Guinta's and which were his siblings', nor did the family set up formal, legal trusts in the names of the children.⁸ However, Rep. Guinta and his parents always understood that a large share of the pot belonged to Rep. Guinta, and in practical terms, Rep. Guinta had always been free to draw on the pot as the need arose. Thus, within the plain meaning of the term, these moneys were Rep. Guinta's "personal funds."

Rep. Guinta's interest in the pot was not simply *de facto*; it was also *de jure*. Rep. Guinta's parents have never restricted their son's access to his share of the pot; hypothetically, however, if they ever had denied him access to those funds, Rep. Guinta would have been able to seek the imposition of a constructive trust, in his benefit, over those accounts. Traditionally, a constructive trust arises wherever "a person holding title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it."⁹ This common law rule holds true under the laws of both New Hampshire (where Rep. Guinta currently lives) and New Jersey (where the family resided when most of the

⁸ While some might question why the Guinta family did not formalize the family pot into separate "trust" accounts for the various family members, the fact is that is simply not the culture of this family. The decision by the FEC to pursue this case cannot turn on a technical point such as the absence of formal legal trust(s), particularly given Rep. Guinta's long history of accessing these funds for purposes wholly unrelated to his Congressional campaign and in keeping with the plain language of FECA.

⁹ See generally RESTATEMENT OF RESTITUTION § 160 (1937).

transfers of Rep. Guinta's assets into the pot took place).¹⁰ Thus, a court would recognize and enforce Rep. Guinta's equitable interest over his fair share of the funds held in the family pot.

Significantly, the amount of the constructive trust to which Rep. Guinta would be entitled would not be limited merely to the amounts that Rep. Guinta contributed to the pot as a child, but would also include any increase in the value of that property from investment.¹¹ Based on our most conservative estimates, then, Rep. Guinta today would be entitled to approximately \$430,000 from the family pot — well more than enough money to cover his loans to his Congressional campaign. And as mentioned above, we understand that the actual increase in the Guinta family's investments, and Rep. Guinta's portion thereof, exceeded the market return.

In sum, under the plain language of the term "personal funds," the money that Rep. Guinta withdrew from the family pot was, in both practical and legal terms, his own personal funds.

a. **Under FECA's Definition, Equitable Interests in Funds to Which Rep. Guinta Had Access or Control Prior to Becoming a Candidate Are Rep. Guinta's Personal Funds.**

Under the definitions of the Federal Election Campaign Act, any funds from the family pot over which Rep. Guinta had a legal right of access to or control over, and with respect to which he had either "legal and rightful title" or "an equitable interest," were Rep. Guinta's "personal funds."¹² As demonstrated, Rep. Guinta had an equitable interest in the family pot, such that he would have been entitled to a constructive trust over the pot in a court of law. Moreover, for more than 20 years prior to becoming a candidate for federal office, Rep. Guinta had both accessed and controlled the family pot. He began advising his family on investments in or around 1987. The 1997 trading authorization for Virginia Guinta's account at Olde Discount shows that Rep. Guinta even had outright authority to make purchases and sales using the funds in that account. And repeatedly through his adult life — well before becoming a candidate for

¹⁰ Both New Hampshire and New Jersey have substantially adopted the common law rule for constructive trusts; hence, the courts of both states would allow Rep. Guinta to claim a constructive trust over his equitable share of the family pot. *See, e.g., Flanigan v. Munson*, 818 A.2d 1275, 1281 (N.J. 2003) ("... our courts employ a two-prong test when determining whether a constructive trust is warranted in a given case. First, a court must find that a party has committed a 'wrongful act.' The act, however, need not be fraudulent to result in a constructive trust; a mere mistake is sufficient for these purposes. Second, the wrongful act must result in a transfer or diversion of property that unjustly enriches the recipient." (citations omitted)); *In re Estate of Cass, In re Cass Family Trust*, 719 A.2d 595, 598 (N.H. 1998) ("A constructive trust may be imposed when clear and convincing evidence shows that a confidential relationship existed between two people, that one of them transferred property to the other, and that the person receiving the property would be unjustly enriched by retaining the property, regardless of whether the person obtained the property honestly." (citations omitted)). Pertinent here, under New Hampshire law, "[a] confidential relationship exists if there is evidence of a family relationship in which one person justifiably believes that the other will act in his or her interest." *Id.* (citations omitted).

¹¹ *See, e.g., Marioni v. Roxy Garments Delivery Co.*, 9 A.3d 607, 611 (N.J. Super. 2010) (denying constructive trustee any of the "entrepreneurial profit" from the property over which the constructive trust was imposed); *Hatch v. Rideout*, 65 A.2d 702, 704 (N.H. 1949) (imposing a constructive trust over property equal to the proportion which the beneficiary's payments bore to the total price).

¹² *See* 2 U.S.C. § 431(26).

Congress — Rep. Guinta made withdrawals from the family pot for personal uses. Thus, under the black letter of the law, Rep. Guinta had a statutory right to consider the family pot as a “personal fund” for purposes of financing his campaign.

This result is consistent with both the letter and the spirit of FECA. In footnote 57 of *Buckley v. Valeo*,¹³ the Supreme Court quoted the Conference Report that accompanied the final version of FECA; the footnote establishes that if a candidate

‘already is in a position to exercise control over funds of a member of his immediate family before he becomes a candidate, then he could draw upon these funds up to the limit of \$35,000.’¹⁴

That is, family funds over which the candidate is in a position to exercise control are *personal funds* for purposes of the campaign contribution limitations.¹⁵ Thus, in the Supreme Court’s authoritative view, “access” or “control” is dispositive on the issue of whether funds are “personal” for purposes of FECA.

In short, Rep. Guinta acted well within the letter and spirit of the law by treating the family pot as personal funds for purposes of the campaign contribution limitations. Because Rep. Guinta had effective “access” to the family pot, effective “control” of the family pot, and an equitable interest in the contents of the family pot, he therefore had a statutory right under FECA to spend these personal funds on his campaign without restriction.

2. Under the Facts Presented Here, Further Enforcement Proceedings Are Not Merited.

Even if the FEC were to decide that — notwithstanding the evidence of Rep. Guinta’s funds being commingled into the family pot, and the evidence of Rep. Guinta’s longstanding history of access to and control over the pot — those funds were nevertheless *not* Rep. Guinta’s “personal funds,” enforcement proceedings under these facts would be entirely contrary to the law and established precedent.

There is *no* evidence of corruption with respect to this candidate or his family and the funds at issue here. Enforcement actions in connection with intrafamily transfers of money made during political campaigns *must* be premised upon or revolve around separate facts

¹³ 424 U.S. 1 (1976).

¹⁴ The Supreme Court in *Buckley* invalidated the \$35,000 limit on the amount of personal funds a candidate can contribute to his own campaign, on the basis that a candidate cannot “corrupt” himself. *Id.* at 54. Likewise, absent other facts demonstrating corruption or the appearance thereof, which are not present here, this intrafamily transfer or contribution did not and does not raise any concerns about corruption. *See generally id.* at 53 n.59 (“the risk of improper influence is somewhat diminished in the case of large contributions from immediate family members”).

¹⁵ *Id.* at 52 n.57 (quoting Conference Report).

indicating either *quid pro quo* corruption, the appearance of corruption, or the blatant use of third-party conduits.

The facts of this case bear no connection to the underlying state interest in preventing corruption or the appearance thereof, under Supreme Court law and precedent.

There is no evidence here that the candidate or a donor used a third-party conduit to contribute through his family in order to circumvent the campaign finance laws, nor does it otherwise involve facts showing actual corruption.

There have been cases where donors, rather than candidates, have used the donors' family members as conduits to make excessive contributions.¹⁶ Such cases have no bearing here, however, where there is simply no suggestion or evidence that the Guinta family pot served as a conduit for corrupting, third-party contributions.

In sum, a non-corrupting, purely intrafamily transfer is not sufficient grounds to merit continued enforcement action because of the complete absence of corruption, or the appearance thereof.

b. **Enforcement Under These Facts Would be Unconstitutional.**

For the FEC to pursue Rep. Guinta or his family, absent any facts suggesting the use of third-party conduits, *quid pro quo* corruption, improper influence by third parties, or the appearance thereof, would be to enforce a restriction for the sake of enforcing a restriction. The First Amendment does not tolerate such a wanton exercise of power.¹⁷ Under Supreme Court precedent, “[p]reventing corruption or the appearance of corruption are the only legitimate and compelling government interests thus far identified for restricting campaign finances.”¹⁸ Here, where there are no facts suggesting either actual corruption or the appearance thereof, prosecution would therefore be constitutionally inappropriate. The natural consequence of such prosecution, ironically, would be to force future candidates for public office even deeper into the pockets of outside contributors — undermining the purpose of the campaign finance laws altogether.¹⁹

¹⁶ See, e.g., *United States v. Winn* (D. Mass.) (defendant reimbursed family members for contributions to candidates); *United States v. Collier et al.* (D.D.C.) (defendants used family, friends, and business associates to make political contributions that were reimbursed by a Native American tribe); *United States v. Fieger et al.* (E.D. Mich.) (defendants used family, friends, and employees to make political contributions that were actually paid by a law firm); *United States v. Schwartz* (C.D. Cal.) (defendant made contributions under own name and through family members and association, which were actually funded by a corporation).

¹⁷ See, e.g., *U.S. v. Danielczyk*, 791 F. Supp. 2d 513, 514 (E.D. Va. 2011) (dismissing criminal charge on constitutional grounds, where alleged conduct did “not create a risk of *quid pro quo* corruption or its appearance”).

¹⁸ *Davis v. FEC*, 554 U.S. 724, 741 (2008).

¹⁹ See generally *Buckley v. Valeo*, 424 U.S. 1, 53 (1976) (“As the Court of Appeals concluded: ‘Manifestly, the core problem of avoiding undisclosed and undue influence on candidates from outside interests has lesser application when the monies involved come from the candidate himself or from his immediate family.’”)

3. Rep. Guinta Accurately Completed His House Financial Disclosure Statement.

Unlike campaign finance, which is governed by FECA, financial disclosure by candidates for Congress is governed by Title I of the Ethics in Government Act of 1978, as amended.²⁰ The Ethics in Government Act serves different ends and employs different means than FECA. Whereas FECA serves only to prevent *quid pro quo* corruption and the appearance thereof,²¹ the purpose of the House financial disclosure requirement is to disclose potential conflicts of interest by federal officials. And whereas FECA allows candidates to treat family money over which they have access, control, and an equitable claim as “personal funds” for campaign finance purposes, the instructions for the House financial disclosure reporting forms require candidates only to disclose those bank accounts and property “held” by the candidate, the candidate’s spouse, or the candidate’s dependent children.²²

Under any reasonable reading of the House financial disclosure report instructions, a commingled family pot held in a candidate’s name would not necessarily need to be disclosed. Rep. Guinta does not personally “hold” the Guinta family pot, even though he has equitable interests in and rights to access and control at least some of the money kept in the pot. Thus, in his May 15, 2010 financial disclosure statement, Rep. Guinta reasonably prepared the asset disclosure schedule consistent with the instructions as they are written.

In any event, after his personal loans to the campaign committee became an issue in the election, Rep. Guinta amended his disclosure report to add the account held in his parents’ names at Bank of America, reflecting funds from the family pot, which he identified as containing between \$250,001 and \$500,000.

Including the entire family pot in the disclosure (*i.e.*, his parents’ LPL Financial account, which was not disclosed) would likely have been an error under the form’s definitions and instructions. This is important, because overreporting Rep. Guinta’s funds would have been just as improper as underreporting his funds.²³ Thus, Rep. Guinta’s initial completion of his

Indeed, the use of personal funds reduces the candidate’s dependence on outside contributions and thereby counteracts the coercive pressures and attendant risks of abuse to which the Act’s contribution limitations are directed.” (citation omitted)).

²⁰ 5 U.S.C. app. 4 §§ 101 *et seq.*

²¹ *See Davis v. FEC, supra.*

²² The instructions do provide that “[g]enerally, you must disclose information concerning each asset held in a trust in which you, your spouse, or a dependent child have a beneficial interest.” However, neither the Guinta family pot nor Rep. Guinta’s equitable claim over a share of the pot would qualify as a legal “trust” within the scope of these instructions. Of course, the Guinta family never thought of the pot as a trust or in any other legalistic manner.

²³ Reporting publicly a large source of personal funds that would be available to a candidate for federal office is of course an advantage that campaigns seek to use to discourage potential opponents and to enhance an image of invincibility; thus, erroneously inflating the amount of personal funds through overreporting Rep. Guinta’s

candidate's personal financial disclosure statement and his subsequent amendment both represented reasonable and good faith attempts to comply with the form's imperfect and ambiguous instructions.

Conclusion

The Guinta's use of a family "pot" — which included \$100,000 of funds belonging to Rep. Guinta that his parents had commingled into the family pot since the time when Rep. Guinta was a young child — admittedly represents an unusual situation. We have submitted documents that prove these facts, however, and the facts themselves are unassailable. Under both FECA and state law, these funds, which appreciated to over \$400,000 with Rep. Guinta's assistance and involvement, constituted his own personal funds from which he was entitled to contribute to his campaign. There was therefore no violation of FECA, and for the same reasons there was no intentional false statement on Rep. Guinta's House financial disclosure form. This purely intrafamily fund matter presents no facts to merit continued enforcement action of Respondents, as there have been no third parties involved nor is there any evidence whatsoever of corruption or even the appearance of corruption.

The facts of the Guinta family pot as the source of Rep. Guinta's personal loans to his campaign do not constitute a violation of FECA.

Under these facts and the law applied to these facts, there is no probable cause to believe that a violation of FECA has occurred and, thus, the MURs should be dismissed.

Respectfully submitted,



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entire family pot could constitute a separate potential violation. Rep. Guinta's report was accurate to the best of his knowledge and belief in accordance with the specific instructions to House candidates.