BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Newt Gingrich
Callista Gingrich
Newt 2012, Inc. and
Lisa Lisker in her official capacity as treasurer
Gingrich Productions, Inc.

MUR 6518

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

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

I. Factual and Procedural Background

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


A. The Complaint and First Response

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

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

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


Newt 2012 had “borne” the costs of “all political activities, travel, and other expenses associated with the presidential campaign of Speaker Gingrich.”

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

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

Finally, Respondents denied that Newt 2012 had failed to disclose its disbursement for the mailing list. Respondents explained that Newt 2012 decided to purchase the list in the second quarter of 2011 but did not pay for it until the last quarter of the year. Accordingly, Newt 2012’s July 2011 Quarterly Report disclosed the fair market value of the mailing list as a debt owed to Newt Gingrich, and its year-end report disclosed the value of the list as a disbursement when the debt was paid. Respondents acknowledged that Newt 2012 had “inadvertently omitted” the debt from its October 2011 Quarterly Report, but stated that it had since filed an amended Quarterly Report “[t]o correct this minor error.”
As support for their assertions, Respondents provided the sworn declarations of the
treasurer of Newt 2012 and the chief operating officer of Gingrich Productions.\(^\text{15}\)

### B. Further Inquiry by Office of General Counsel

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

Respondents answered OGC’s inquiries in a supplemental response.\(^\text{18}\) The information
provided in this supplemental response forms the basis for most of OGC’s recommendations that
the Commission find reason to believe that Respondents violated the Act and Commission
regulations.

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\(^{15}\) See MUR 6518 (Newt Gingrich, et al.), Resp., Ex. 8 (Declaration of Lisa Lisker, Treasurer and Custodian
of Records, Newt 2012) ("Lisker Declaration"); MUR 6518 (Newt Gingrich, et al.), Resp., Ex. 9 (Declaration of
Alicia Melvin, Chief Operating Officer, Gingrich Productions, Inc.) ("Melvin Declaration").

\(^{16}\) Letter from Kathleen Guith, Deputy Associate General Counsel for Enforcement, to Stefan C. Passantino

\(^{17}\) Id. at 2.

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

The Act prohibits any corporation from making a contribution to a candidate in connection with a federal election, and any candidate from knowingly receiving such a contribution.\(^{19}\) Commission regulations interpret the term "contribution" to include "the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services," where such goods or services include but are not limited to "facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists."\(^{20}\) Commission regulations further prohibit corporations from "facilitating the making of contributions to candidates . . . other than to the separate segregated funds of the corporations."\(^{21}\) The term "[f]acilitation means using corporate . . . resources or facilities to engage in fundraising activities in connection with any federal election,"\(^{22}\) including "[u]sing a corporate . . . list of customers, clients, vendors, or others who are not in the restricted class to solicit contributions . . . unless the corporation . . . receives advance payment for the fair market value of the list."\(^{23}\)

The Act further provides that a "contribution . . . shall not be converted by any person to personal use."\(^{24}\) Commission regulations define "personal use" as "any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder."\(^{25}\)

The Act requires authorized committees to report the amount and nature of their outstanding debts.\(^{26}\) An authorized committee must also report the total amount of its disbursements for each reporting period and for the election cycle,\(^{27}\) along with the name and

\(^{19}\) 52 U.S.C. § 30118(a); see also 11 C.F.R. §§ 114.2(a) (prohibiting corporations from making contributions), 114.2(d) (prohibiting candidates and political committees from knowingly receiving corporate contributions), 114.2(e) (prohibiting corporate officers from consenting to corporate contributions).

\(^{20}\) 11 C.F.R. § 100.52(d)(1).

\(^{21}\) 11 C.F.R. § 114.2(f)(1).

\(^{22}\) Id.


\(^{24}\) 52 U.S.C. § 30114(b)(1); see also 11 C.F.R. § 113.2(e).

\(^{25}\) 11 C.F.R. § 113.1(g).

\(^{26}\) 52 U.S.C. § 30104(b)(8); see also 11 C.F.R. § 104.11.

\(^{27}\) 52 U.S.C. § 30104(b)(4); 11 C.F.R. § 104.3(b).
A. There Is No Reason to Believe Respondents Violated Act

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

1. Gingrich Productions' Book Signings and Promotional Events

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

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

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

28 52 U.S.C. § 30104(b)(5)(A); 11 C.F.R. § 104.9(a).
30 Id. ¶ 23 (quoting Compl., Ex. 11, Gabriel Article).
31 See MUR 6518 (Newt Gingrich, et al.), Compl., Ex. 11, Gabriel Article at 3 ("At readings, aides collect customers' e-mails to add to fund-raising pitches for the campaign.").
unsworn summary observations or paraphrases provide questionable legal and factual bases upon
which to substantiate a reason to believe finding. However, even were we to credit the
representations in articles attached to the Complaint here, they would fail to provide a reason to
believe that Respondents violated the Act or Commission regulations.

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

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

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

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

36 Id. at 15.

37 Id.

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

2. Sale and Use of Mailing List

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

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

Finally, Respondents explain that Newt 2012 did, in fact, report Newt 2012’s purchase of the list from Newt Gingrich. The committee disclosed the purchase of the list as a $47,005 debt owed to Newt Gingrich on its July 15 Quarterly Report and amended October 15 Quarterly Report to the Commission, before payment had been made, and as an expenditure on its Year-End Report when the debt was paid.

The Complaint’s speculative allegation that Gingrich Productions was the true owner of the mailing list in question — based, as it is, solely on a negative inference from Newt
Gingrich’s financial disclosure report — is refuted by the available evidence. These include the instructions on the face of Newt Gingrich’s public financial disclosure report, requiring the disclosure only of “each asset held for investment or the production of income .. or which generated more than $200 in income during the reporting period,” and a declaration from the chief operating officer of Gingrich Productions, stating that Gingrich Productions never “sold, attempted to sell, or negotiated to sell” a contact list to Newt 2012. Thus, there is no reason to believe anyone other than Newt Gingrich owned the list in question.

Further, Newt 2012’s subsequent disclosure reports indicate that it did in fact report the purchase of the list both as a debt owed, and as a disbursement made, to Newt Gingrich. Although the committee “inadvertently omitted” its debt obligation from its original October 2012 Quarterly Report, it previously disclosed the debt on its July 2012 Quarterly Report and amended its October Quarterly report shortly thereafter to disclose this debt. Thus, any injury to the Public’s informational interest was both minimal and fleeting.

B. Supplemental Information Does Not Support Reason to Believe That Respondents Violated Act

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

45 MUR 6518 (Newt Gingrich, et al.), Resp., Ex. 9, Melvin Declaration ¶ 11.
47 MUR 6518 (Newt Gingrich, et al.), Resp. at 30 n.9; see also id., Ex. 11, Newt 2012 Amended Rpt. of Receipts and Disbursements, October 15 Quarterly Rpt., Schedule D-P.
48 That said, there was a discrepancy in the purpose description of the debt. It appears as “direct mail list/travel” in Newt 2012’s July 15 Quarterly Report and as “travel” in its amended October 15 Quarterly Report. But when Newt 2012 paid the debt, its Year-End Report described the purpose of its disbursement as “list purchase.” To ensure the accuracy of the public record and address this minor discrepancy, we voted to refer this issue to the Alternative Dispute Resolution Office (“ADRO”). See Amended Certification dated June 16, 2012. The Commission subsequently accepted an agreement negotiated with Newt 2012 that required it to clarify the discrepancy. See ADR 772, Certification (Feb. 23, 2016).
49 The Act authorizes investigations only after four or more Commissioners find there is reason to believe a violation occurred based upon the information presented in a complaint and response or upon information ascertained in the normal course of the Commission’s responsibilities. 52 U.S.C. § 30109. For the Act’s reason to
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dismiss a matter where it believes the statutory requirements or fundamental fairness have not
been observed. But here, even were we to take that information into account, we are not
persuaded that there is reason to believe Respondents violated the Act and Commission
regulations, or that any such potential violation would justify an investigation.

1. Corporate Contributions

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

- Two Gingrich Productions employees were each listed as an "all day trip leader" for
  Callista Gingrich on a day that she was scheduled to engage in both Gingrich Productions
  events and Newt 2012 events;\(^{50}\)

- A Gingrich Productions employee submitted two reimbursement forms to Gingrich
  Productions for travel costs, one for the month in which she served as "all day trip
  leader" that included travel expenses, and a second for a different time period that
  identified several expenses as "campaign";\(^{51}\) and

- Newt 2012 reported making several small "salary" disbursements to two Gingrich
  Productions employees.\(^{52}\)

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

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

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

\(^{52}\) Id. at 8, n.4. OGC also notes that one Gingrich Productions employee listed Newt 2012 as her employer on
her LinkedIn profile. Id. OGC had no authorization to research the employee's LinkedIn profile, provided no notice
of this information to Respondents, and did not give Respondents an opportunity to respond to this information.
This is a slender reed on which to rest a reason to believe recommendation, particularly when there is no indication that these individuals did anything other than assist Callista Gingrich with her Gingrich Productions activities.

In fact, the available evidence indicates that Gingrich Productions went to great lengths to avoid making a contribution to Newt 2012 when marketing and promoting its products in close proximity to campaign events. Respondents repeatedly deny that Gingrich Productions provided an unreimbursed benefit or service to Newt 2012, and assert that there was a firewall separating Newt 2012 and Gingrich Productions. These assertions are supported by sworn declarations, and the schedules themselves, which show that Newt 2012 employees, not Gingrich Productions employees, were the designated staffers at campaign events. To the extent that their work for Gingrich Productions may have inadvertently benefitted Newt 2012, the available evidence indicates that Gingrich Productions’s employees kept track of their time and segregated out any expenses that may have been attributable to those activities.

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53 See, e.g., MUR 6518 (Newt Gingrich, et al.), Resp., Melvin Declaration ¶ 9 ("In all situations where Gingrich Productions has hosted marketing or promotional events in close proximity to political campaign events, the company has never used corporate resources to pay for any portion of the events promoting the federal candidate" or "to facilitate or aid the making of present or future contributions to the federal candidate."); id. ¶ 7 ("Before marketing Gingrich Productions products in close proximity to political campaign events, the company takes great care to remind all employees engaged in such efforts about the legal protocols restricting corporate and campaign interaction. . . . [S]taff are instructed not to utilize any company resources to directly benefit or otherwise facilitate the activities of a political campaign or organization."); id. ¶ 5 (Gingrich Productions worked with outside legal counsel to develop “a series of protocols designed to shield the company and its employees from running afoul of” applicable law, “in particular federal campaign finance restrictions”); MUR 6518 (Newt Gingrich, et al.), Supplemental Resp., Ex. 4 (Schedule for December 3, 2011) (showing no Gingrich Productions employees as designated staff at any campaign-related events for Callista Gingrich occurring throughout day).

54 MUR 6518 (Newt Gingrich, et al.), Supplemental Resp., Ex. 6 (Gingrich Group, LLC Expense Reimbursement Form submitted by Anna Haberlein for December 2011). Indeed, it is unclear to what standard OGC would hold the Gingrich Productions employees who accompanied Callista Gingrich when she travelled for out-of-town product promotion and campaign events. Would OGC require the employees to have attended only the Gingrich Productions events and to have disappeared for each Newt 2012 event? This is not the legal standard, nor is it a realistic one. Our enforcement decisions must be informed by a healthy dose “of common sense.” See MUR 5642 (George Soros), Statement of Reasons of Chair Lenhard and Commissioner Weintraub at 3 (Dec. 31, 2007) (explaining vote against finding that an individual's travel costs for a book tour became expenditures because he advocated the defeat of a federal candidate during the book's tour's events). The logistics of arranging for a busy candidate who is also a successful businessman, and his spouse, to appear at corporate and campaign events occurring throughout the day are sufficiently challenging without adding in disappearing and reappearing staffers. Moreover, even if there were reason to believe that a violation of the Act had occurred, we would exercise our prosecutorial discretion to dismiss the matter, given Respondents' good faith efforts to comply with the Act and Commission regulations, the weakness of the evidence against them, the likely difficulty in ascertaining the amount of the violation, and the insignificance of any resulting violation.
2. **Conversion of Campaign Funds to Personal Use**

OGC's recommendations on the personal use issue are similarly infirm. OGC concludes that Newt 2012 and Newt Gingrich violated the prohibition on converting campaign funds to personal use by providing services that benefitted Gingrich Productions, and by using Newt 2012's website to promote Gingrich Productions's products. As explained below, we do not find OGC's argument on either point to be persuasive.

**a. Provision of Services**

OGC cites the following information to support its recommendation that the Commission find reason to believe that Newt 2012 provided services to benefit Gingrich Productions:

- Two Newt 2012 employees were each listed on a schedule as an "all day trip leader" for Newt Gingrich on a day that included both Newt 2012 events and Gingrich Productions events, with one of the employees listed as driving to and from a screening of a Gingrich Productions movie with local Republican groups;\(^55\)

- A Newt 2012 employee who worked as Newt Gingrich’s scheduler was “responsible for scheduling both campaign and non-campaign appearances and events in conjunction with Newt 2012 and Gingrich Productions”;\(^56\)

- A Gingrich Productions employee was listed on a schedule as a passenger on a chartered flight with Newt and Callista Gingrich and a Newt 2012 employee;\(^57\)

- A Newt 2012 employee was listed on a schedule as designated staff at a Gingrich Productions book signing.\(^58\)

In reaching its conclusion, OGC places great weight on the fact that some Newt 2012 employees appear to have had duties that related in some way to Gingrich Productions events. But the test is not whether such duties existed, it is whether such duties existed “irrespective of the . . . campaign.”\(^59\) Here, OGC's inferences are highly speculative. For example, OGC views

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56. Id. at 13 (citing MUR 6518 (Newt Gingrich, et al.), Supplemental Resp., Ex. 1 (citing Kelly Declaration)).

57. Id. at 14 (citing MUR 6518 (Newt Gingrich, et al.), Supplemental Resp., Ex. 4 (Schedule for December 3, 2011)).

58. Id. at 9 (citing MUR 6518 (Newt Gingrich, et al.), Supplemental Resp., Ex. 3 (Schedule for October 7, 2011)).

59. 52 U.S.C. § 30114(b)(2).
as pernicious the idea that a candidate's personal scheduler might be involved in scheduling
events with a private corporation. Yet, there is no indication in the record that such activities are
incompatible with a legitimate campaign role. The candidate is only one person and can be in
only one place at any given time. To ensure that the candidate can be at each campaign event, a
scheduler must be aware of and involved in the logistical arrangements for all events involving
the candidate. These duties are not irrespective of the scheduler's role managing the candidate's
schedule; rather, they are an integral and necessary part of it.

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

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

b. Newt 2012 Website

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

Footnotes:
60 MUR 6518 (Newt Gingrich, et al.), OGC Letter at 2 ("inviting [Respondents'] attention to references in
the materials attached to the Complaint to portions of the Newt 2012 website that promote book signnings and
provide links to Gingrich Productions's website").
61 See MUR 6518 (Newt Gingrich, et al.), Supplemental Resp. at 7 (stating that information posted on Newt
2012's webpages relating to Gingrich Productions's products was "much less 'personal' and 'promotional' in nature
than those blessed by the Commission with regards to Senator Brown's campaign" and "would not have occurred
irrespective of Speaker Gingrich's campaign").
accounted for approximately 10% of the total links on Newt 2012's website, and that "Gingrich Productions-related posts" accounted for more than 40% of the total content of "Callista's Canvas," a blog maintained on the website by the candidate's spouse. In support of its reason to believe recommendation, OGC presented the Commission with hundreds of pages of web printouts without having notified Respondents that the materials were under consideration, much less giving Respondents an opportunity to respond to the allegation, as the Act and the Commission's regulations require in complaint-generated matters.\(^2\)

As for the merits of the allegation, we do not believe that the references on Newt 2012's website to Gingrich Productions's products, website, and events constitute personal use. The Commission has previously concluded that candidates may post a *de minimis* amount of material promoting their books on their campaign websites at *de minimis* cost without violating the personal use restriction, and OGC has not shown that the use of Newt 2012's website at issue here was more than *de minimis* or was irrespective of the campaign.\(^3\) Even by OGC's own count, links to Gingrich Productions's products are minimal relative to the Newt 2012 website as a whole, constituting only about 10% of all links, which themselves constitute only a small fraction of the information on the website. Moreover, although the 40% figure cited by OGC is larger on its face, it relates only to the "Callista's Canvas" blog posting. Callista's Canvas is only one feature on the campaign's website; the actual percentage of the website containing these references would be much smaller. Nor do the references in the Callista's Canvas blog posts ask website readers "to purchase products from or take any other action with regard to Gingrich Productions."\(^4\) Rather, they provide an avenue for visitors to learn more about the outside activities of the candidate and his spouse, and an opportunity to interact with the candidate beyond campaign events. Further, the webpages culled by OGC show that Callista Gingrich’s activities with respect to a childrent’s book that she authored were intended to show her suitability as a potential First Lady.\(^5\) This use of a candidate's website to post information about a candidate's spouse, including her activities outside of the campaign, and about the candidate’s schedule, is not irrespective of the candidate's campaign for federal office.\(^6\) Instead, these

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\(^3\) See, e.g. Advisory Opinion 2014-06 (Ryan) at 7; Advisory Opinion 2011-02 (Brown) at 6-7; Advisory Opinion 2006-07 (Hayworth) at 3.

\(^4\) MUR 6518 (Newt Gingrich, et al.), Supplemental Resp. at 9. OGC rejects this argument as "unavailing," in part because some Newt 2012 web pages include links to other web pages that "urge the purchase of Gingrich Productions products." MUR 6518 (Newt Gingrich, et al.), First General Counsel's Rpt. at 17. Here, OGC is imputing to Respondents what a third party posted on its own website, rather than reviewing the postings on Newt 2012's website on their own merits.

\(^5\) See Callista's Canvas, A Conversation With Callista Gingrich (Nov. 16, 2011) ("[I]f I were fortunate enough to become First Lady, I would ... reinforce the importance of learning American history so our children can understand that we are an exceptional nation. ... American history is so important. It encourages our patriotism, teaches us the key elements of being American, and helps us better understand who we are. I recently wrote a book for 4-8 year olds, entitled, *Sweet Land of Liberty*. ... My goal is to highlight the wonderful achievements of our country, to arouse a love for America, and to communicate why America is indeed a special nation.")

\(^6\) MUR 6518 (Newt Gingrich, et al.), Supplemental Resp. at 8.
activities are consistent with the candidate’s obligation to introduce himself, his family, and their world view to voters — activities which would not exist irrespective of the candidacy. Accordingly, under these circumstances, the references and links on Newt 2012’s website to Gingrich Productions’s products, websites, and events do not constitute personal use in violation of the Act and Commission regulations. Even if they did confer some personal benefit, the value of including such links and connections to the campaign was likely de minimis and would not justify the costs and burdens to the Commission and the respondents of further enforcement.
III. Conclusion

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

Matthew S. Petersen
Chairman

Caroline C. Hunter
Commissioner

Lee E. Goodman
Commissioner