

January 5, 2012

Ronald C. Machen Jr.
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James W. McJunkin
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601 4th Street, N.W.
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BY HAND

Re: Request for Investigation into Conduct of Newt Gingrich, the Center for Healthcare Transformation, and the Gingrich Group, LLC

Dear Mr. Machen and Assistant Director McJunkin:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the U.S. Attorney for the District of Columbia and the Federal Bureau of Investigation commence an immediate investigation into whether Newt Gingrich, the Center for Healthcare Transformation, or the Gingrich Group, LLC violated the Lobbying Disclosure Act, 2 U.S.C. §§ 1601-1614, by failing to register as lobbyists and failing to file lobbying disclosure reports.

Background

Mr. Gingrich founded the Gingrich Group, a for-profit consulting firm, in 2000,¹ and has served as the firm’s chief executive officer and chairman.² The Center for Health Transformation (“CHT”) is a “project” of the Gingrich Group, which Mr. Gingrich founded in January 2003.³ CHT is a “membership-based, membership-supported organization” “dedicated to the creation of

¹ Nancy Desmond, Gingrich Group LLC/Center for Health Transformation Statement in Response to Recent Press Inquiries, November 21, 2011 (attached as Exhibit 1).

² Newt.org website, “About Newt” page, *available at*: <http://web.archive.org/web/20030401204924/http://www.newt.org/index.php?submenu=about&src=gendocs&link>About+Newt> (captured April 1, 2003) (attached as Exhibit 2).

³ Center for Health Transformation website, “The Center’s History” page, *available at*: http://www.healthtransformation.net/cs/the_centers_history, (attached as Exhibit 3).

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a 21st Century Intelligent Health System.”⁴ Members pay between \$20,000 and \$200,000 per year for varying levels of membership.⁵ Between 2001 and 2010, CHT/the Gingrich Group had gross revenues of nearly \$55 million from 300 members.⁶

From the beginning, CHT advocated for changes in Medicare. One of its earliest initiatives, launched in early 2003, was a “Medicare Transformation Project.”⁷ CHT sought, among other things, a Medicare prescription drug benefit that would use online comparison tools and electronic prescriptions, improve diabetes management, and computerize physician order entry.⁸

In March 2003, then-President Bush proposed wide changes to the Medicare program, including adding a prescription drug benefit to be made available through private insurance companies.⁹ The House of Representatives and the Senate narrowly passed different versions of the legislation in June 2003,¹⁰ but struggled during the summer and fall to reconcile their differences.¹¹ According to Mr. Gingrich, during this period he directly contacted members of Congress and the administration to lobby for the inclusion of specific provisions in the

⁴ Desmond, Gingrich Group LLC/Center for Health Transformation Statement in Response to Recent Press Inquiries.

⁵ *Id.*

⁶ *Id.*

⁷ Center for Health Transformation website, “The Medicare Transformation Project” page, available at: <http://web.archive.org/web/20030629221540/http://healthtransformation.net/projects/medicare.asp> (captured June 29, 2003) (attached as Exhibit 4).

⁸ *Id.*; Center for Health Transformation, Issue Brief: Adding a Prescription Drug Benefit to Medicare, available at: <http://web.archive.org/web/20031001190424/http://healthtransformation.net/projects/suppdocs/TravelocityModelPersonalHealthFormulary.pdf> (captured October 1, 2003) (attached as Exhibit 5).

⁹ Robert Pear and Robin Toner, Bush Medicare Proposal Urges Switch to Private Insurers, *New York Times*, March 5, 2003 (attached as Exhibit 6).

¹⁰ Helen Dewar and Amy Goldstein, Medicare Bills Reach Last Lap In Congress, *Washington Post*, June 29, 2003 (attached as Exhibit 7).

¹¹ Robert Pear, Bill on Medicare Drug Benefit Is Stalled by House-Senate Republican Antagonism, *New York Times*, August 27, 2003 (attached as Exhibit 8).

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legislation.¹² Mr. Gingrich said he had been in “regular communications with the White House and key players on Capitol Hill,” including then-Senate Majority Leader Bill Frist (R-TN) and then-House Ways and Means Committee Chairman Bill Thomas (R-CA), regarding specific proposals.¹³ Mr. Gingrich also held a health care briefing, sponsored by CHT, for congressional staff on August 18, 2003.¹⁴ During this briefing Mr. Gingrich discussed what should be included in the “right conference report” on the legislation and laid out “The Components of a Transformational Medicare Bill.”¹⁵

As work on the Medicare bill progressed, Mr. Gingrich and CHT kept CHT members informed about it. Among other things, Mr. Gingrich discussed the bill in monthly conference calls with CHT members,¹⁶ and CHT’s newsletter for members carried Mr. Gingrich’s reports on the legislation.¹⁷

¹² Bob Cusack, Newt Shapes Med Conference, *The Hill*, September 3, 2003 (attached as Exhibit 9).

¹³ CHT highlighted Mr. Gingrich’s efforts on its website. Center for Health Transformation website, “CHT in the News” page, July 2003, *available at*: <http://web.archive.org/web/20030929000615/http://www.healthtransformation.net/news/chtnews.asp> (attached as Exhibit 10).

¹⁴ Center for Health Transformation, CHT E-newsletter August 2003, *available at*: <http://web.archive.org/web/20040601204208/http://www.healthtransformation.net/enewsletter/803.htm> (attached as Exhibit 11); Future of Health Care, August 18, 2003, *video available at*: <http://www.c-spanvideo.org/program/177819-1>.

¹⁵ *Id.*; The Opportunity to Create a 21st Century Health Care System of More Choice with Higher Quality at Lower Cost, August 18, 2003, *available at*: <http://web.archive.org/web/20040309063300/http://www.healthtransformation.net/projects/suppdocs/CSPANHill081803.pdf> (excerpts attached as Exhibit 12).

¹⁶ *See, e.g.*, Center for Health Transformation, Notes from Newt Gingrich’s August 14, 2003 Center for Health Transformation Conference Call, *available at*: http://web.archive.org/web/20040806162147/http://www.healthtransformation.net/products/MemberCall_8-14-03.pdf (attached as Exhibit 13).

¹⁷ *See, e.g.*, Center for Health Transformation, CHT E-newsletter November 2003, *available at*: <http://web.archive.org/web/20040601203717/http://www.healthtransformation.net/enewsletter/1103.htm> (attached as Exhibit 14).

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Republican leaders announced a compromise in mid-November 2003,¹⁸ but it was unclear if the deal had enough support from conservative Republicans to pass the House.¹⁹ Lobbying by supporters and opponents of the bill was intense.²⁰ As the final votes approached, Mr. Gingrich again directly contacted members of both the House and Senate, urging them to vote for the bill.

According to former House members and congressional staff, Mr. Gingrich called and met with members individually to pressure them to vote for the legislation. Former Rep. Marilyn Musgrave (R-CO), for example, recently said Mr. Gingrich called her at the height of the debate and “wanted a yes” vote.²¹ Two Republican staff members similarly asserted the members for whom they worked were “lobbied by Gingrich over the phone.”²² Mr. Gingrich “was calling around Capitol Hill and visiting Republican congressmen in 2003 in an effort to convince conservatives to support” the bill, according to former Republican staff members.²³

Mr. Gingrich also lobbied members in larger meetings. In late November, Mr. Gingrich urged members in separate closed-door meetings of both House and Senate Republicans to vote for the bill.²⁴ Mr. Gingrich also spoke to several meetings of conservative Republicans before

¹⁸ Robert Pear, Deal ‘In Principle’ For Medicare Plan To Cover Drug Costs, *New York Times*, November 16, 2003 (attached as Exhibit 15).

¹⁹ Robert Pear and Robin Toner, Counting Votes and Attacks In Final Push for Medicare Bill, *New York Times*, November 20, 2003 (attached as Exhibit 16).

²⁰ Robert Pear and Robin Toner, GOP Begins Push for Medicare Bill, *New York Times*, November 17, 2003 (attached as Exhibit 17).

²¹ Peter Hamby, Gingrich Urged Yes Vote on Controversial Medicare Bill, Former Congresswoman Says, *CNN*, December 28, 2011 (attached as Exhibit 18).

²² Timothy P. Carney, Newt Gingrich Was a Lobbyist, Plain and Simple, *Washington Examiner*, November 20, 2011 (attached as Exhibit 19).

²³ *Id.*

²⁴ Helen Dewar, Gingrich Joins Call for Swift Passage of Medicare Bill, *Washington Post*, November 20, 2003 (attached as Exhibit 20); Robert Novak, White House Defends Bush Absence, *Chicago Sun-Times*, November 23, 2003 (attached as Exhibit 21); Stephen J. Norton, From Leading the Republican Revolution to a Sage Behind the Scenes, *Congressional Quarterly Weekly*, September 4, 2004 (attached as Exhibit 22).

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the pivotal House vote.²⁵ For example, Mr. Gingrich was the “special guest” at a meeting Rep. Jack Kingston (R-GA) held with a few Republican congressmen and their staff just prior to the vote on the bill, where he urged members to pass it.²⁶ Rep. Jeff Flake (R-AZ) and former Reps. Butch Otter (R-ID) and Jeb Bradley (R-NH) recently recalled these meetings, asserting Mr. Gingrich “helped persuade reluctant Republicans to vote for the Medicare prescription-drug program” in a private meeting.²⁷ One way Mr. Gingrich tried to “persuade” members was to tell them they did not “deserve to govern as Republicans” if they could not pass the bill, and demand that anyone who voted against the legislation “come and explain it to me.”²⁸

Mr. Gingrich’s lobbying “moved votes,” according to one former staff member,²⁹ and a lobbyist said Mr. Gingrich’s talks to House Republicans “totally changed the dynamic.”³⁰ Nevertheless, the bill nearly failed when the House voted on it. In a controversial maneuver, however, Republican leaders held open the vote for three hours and convinced a handful of members to switch their votes, passing the legislation by a narrow margin.³¹

President Bush signed the bill on December 8, 2003. Mr. Gingrich attended the signing and brought with him “charter” members of CHT - representatives of companies that had paid \$200,000 to join CHT.³²

²⁵ Douglas Waller, Reforming Medicare, The Gingrich Way, *Time*, November 30, 2003 (attached as Exhibit 23).

²⁶ Carney, *Washington Examiner*, Nov. 20, 2011.

²⁷ Tony Leys, Two Claim Gingrich Lobbied in ‘03, *Des Moines Register*, December 28, 2011 (attached as Exhibit 24); Shira Schoenberg, Newt Gingrich Denies That His 2003 Advocacy for Medicare Expansion Was Lobbying, *Boston Globe*, December 28, 2011 (attached as Exhibit 25).

²⁸ Leys, *Des Moines Register*, Dec. 28, 2003; Norton, *Congressional Quarterly Weekly*, Sept. 4, 2004.

²⁹ Carney, *Washington Examiner*, Nov. 20, 2011.

³⁰ Norton, *Congressional Quarterly Weekly*, Sept. 4, 2004.

³¹ Robert Pear and Robin Toner, Sharply Split, House Passes Broad Medicare Overhaul, *New York Times*, November 23, 2003 (attached as Exhibit 26).

³² Center for Health Transformation, CHT E-newsletter December 2003, available at: <http://web.archive.org/web/20040601203440/http://www.healthtransformation.net/enewsletter/1>

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Immediately after the Medicare bill became law, CHT took credit for helping pass it. In its December 2003 “e-newsletter,” CHT asserted it had: “Worked with the Bush administration, key leaders in the House and Senate, AARP, and key experts to develop and help pass a transformational Medicare Bill.”³³ Similarly, in material provided to prospective members in 2004, CHT asserted “The Gingrich Team” was: “Instrumental in shaping the transformational Medicare Bill of 2003.”³⁴

At the time Mr. Gingrich was contacting members of Congress about the bill, members of CHT included insulin manufacturer Novo Nordisk, drug maker Wyeth Pharmaceuticals, and electronic health care record companies such as HealthTrio.³⁵ Within a year, CHT had signed up scores of new members, including drug maker Eli Lilly, electronic health care record provider Siemens, and health benefits administrator SHPS, Inc.³⁶

Also around this time, CHT represented itself as providing access to government officials and as a provider of advocacy services. The membership benefits listed on CHT’s website included: “Advocacy, coalition building and communications to remove roadblocks and accelerate adoption of transformational policies.” CHT’s products and services included: “Public events and advocacy, including Newt Gingrich speeches, briefings, meetings, writings, and other

[203.htm](#) (attached as Exhibit 27).

³³ *Id.*

³⁴ Center for Health Transformation, “Learn more about CHT membership” presentation, p. 15, *available at*: <http://web.archive.org/web/20040806155411/http://www.healthtransformation.net/members/CHT%20flipchart-073004.pdf> (excerpts attached as Exhibit 28).

³⁵ Center for Health Transformation website, “Members of the Center for Health Transformation” page, *available at*: <http://web.archive.org/web/20031215202938/http://www.healthtransformation.net/members/Memberlist.html> (captured December 15, 2003) (attached as Exhibit 29).

³⁶ Center for Health Transformation website, “Members of the Center for Health Transformation” page, *available at*: <http://web.archive.org/web/20041103142708/http://www.healthtransformation.net/members/Memberlist.html> (captured November 3, 2004) (attached as Exhibit 30).

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public communications to accelerate transformation.”³⁷ In addition, in the material provided to prospective members, CHT asserted the services and products for “founding charter,” “charter,” and “premier” members included: “Access to top transformational leadership across industry and government.”³⁸

Violations

Failure to register

Under the Lobbying Disclosure Act (“LDA”),³⁹ an individual is a lobbyist if he or she “is employed or retained by a client for financial or other compensation for services that include more than one lobbying contact, other than an individual whose lobbying activities constitute less than 20 percent of the time engaged in the services provided by such individual to that client over a 3-month period.”⁴⁰ In other words, an individual is a lobbyist with respect to a particular client if he or she: (1) is employed or retained by a client for financial compensation; (2) makes more than one lobbying contact for that client; and (3) spends at least 20 percent of his or her total time providing services to that client, over any three month period, on lobbying activities.⁴¹ A lobbyist or an organization employing a lobbyist must register with the Clerk of the House and the Secretary of the Senate within 45 days after the lobbyist first makes a lobbying contact or is employed or retained to do so.⁴²

Mr. Gingrich appears to have met the first two elements of this definition, and the third should be the subject of an investigation. First, Mr. Gingrich was employed or retained by a

³⁷ Center for Health Transformation website, “Membership Overview” page, *available at*: <http://web.archive.org/web/20040605074920/http://healthtransformation.net/members/index.htm> (attached as Exhibit 31); *see also* Huma Khan, Newt Gingrich Had Lucrative Health Industry Ties, *ABC News*, November 18, 2011 (attached as Exhibit 32).

³⁸ Center for Health Transformation, “Learn more about CHT membership” presentation, p. 41.

³⁹ 2 U.S.C. §§ 1601-1614.

⁴⁰ 2 U.S.C. § 1602(10).

⁴¹ Clerk of the House of Representative and Secretary of the Senate, *Lobbying Disclosure Act Guidance*, p. 5 (“LDA Guidance”).

⁴² 2 U.S.C. § 1603(a)(1).

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client for financial compensation during the period when he made lobbying contacts. A “client” under the LDA includes any entity whose employees act as lobbyists on behalf of that entity.⁴³ The LDA further provides that a coalition or association may be a client, even if the coalition or association is not a legal entity.⁴⁴ As a membership organization to which members pay dues, CHT is a coalition or association under the LDA, and it employed or retained Mr. Gingrich.⁴⁵ In addition, CHT is a project of the Gingrich Group, of which Mr. Gingrich was the chief executive officer in 2003. The public record does not indicate whether Mr. Gingrich was paid by the Gingrich Group or CHT during 2003, but as the Gingrich Group’s chief executive officer at the time it is very likely he was financially compensated.⁴⁶

Second, Mr. Gingrich unquestionably made more than one lobbying contact with regard to the Medicare bill, and did so for CHT. A “lobbying contact” under the LDA includes any oral or written communication to a covered legislative branch or executive branch official made on behalf of a client with regard to “the formulation, modification, or adoption of Federal legislation.”⁴⁷ During 2003, Mr. Gingrich repeatedly met with and spoke to members of Congress and the Bush administration, both individually and in groups, regarding passage of the Medicare bill.⁴⁸

⁴³ 2 U.S.C. § 1602(2).

⁴⁴ *Id.*; LDA Guidance, p. 11.

⁴⁵ 2 U.S.C. § 1602(5) (defining “employee” as: “any individual who is an officer, employee, partner, director, or proprietor of a person or an entity” who is not a independent contractor or unpaid volunteer).

⁴⁶ For organizations whose employees engaged in lobbying activities on the organization’s behalf, registration is not required when the total expenses in connection with lobbying activities are less than \$10,000 in a quarterly period (adjusted for inflation). 2 U.S.C. § 1603(a)(3)(A). An investigation is necessary to determine if CHT’s lobbying expenses exceeded this amount, but it is likely they did.

⁴⁷ 2 U.S.C. § 1602(8). Covered legislative branch officials include members of Congress and staff, and covered executive branch officials include most policy-making officials as well as any employee of the Executive Office of the President. 2 U.S.C. §§ 1602(3-4)

⁴⁸ While the statute of limitations for LDA violations is five years, if Mr. Gingrich engaged in a conspiracy to violate the LDA, the statute of limitations begins to run on the date of the last action taken to further or enable the conspiracy. 18 U.S.C. § 371. CHT still exists, and Mr. Gingrich remained active with CHT through 2011. *See, e.g.*, Center for Health

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Mr. Gingrich recently claimed he was “not lobbying” and did not need to register because he is “allowed as a citizen to say I’d like to see this bill passed,” and “wasn’t paid by anybody to say that.”⁴⁹ Mr. Gingrich’s spokesman added Mr. Gingrich was “speaking for himself and not on behalf of any client.”⁵⁰ Apparently, Mr. Gingrich contends he was acting as a civic-minded private citizen when he repeatedly contacted members of Congress and the Bush administration to urge them to include specific provisions in the legislation and pass it, and was not paid by CHT, the Gingrich Group, or any other client to make these contacts.

Mr. Gingrich also has broadly insisted he never lobbied on any issue. Responding in to a news report that he lobbied for CHT and others, Mr. Gingrich unequivocally asserted: “I did no lobbying of any kind.”⁵¹ He similarly claimed: “I do no lobbying, any lobbying of any kind, I never have.”⁵²

As for CHT, both CHT and Mr. Gingrich claim CHT did no lobbying. CHT’s current chief executive officer, Nancy Desmond, asserted “[w]e do no lobbying for clients and always make that clear from the outset.”⁵³ Ms. Desmond also said CHT has written contracts with members that “clearly stipulated” CHT does not lobby.⁵⁴ Mr. Gingrich, asked about lobbying for CHT, similarly said “[i]t’s written in our contracts that we do not do any lobbying of any kind.”⁵⁵ In addition, many pages on CHT’s website include the disclaimer: “The Center for Health

Transformation, CHT Member Call - Speaker Gingrich Reviews the State of the Union, January 26, 2011 (attached as Exhibit 33).

⁴⁹ Hamby, *CNN*, Dec. 28, 2011

⁵⁰ *Id.*

⁵¹ Philip Elliot, Gingrich Says He Never Lobbied, Didn’t Need Money, *Associated Press*, November 29, 2011 (attached as Exhibit 34).

⁵² Kevin Landrigan, Gingrich Claims Bipartisan Successes, *Nashua Telegraph*, December 13, 2011 (attached as Exhibit 35).

⁵³ Desmond, Gingrich Group LLC/Center for Health Transformation Statement in Response to Recent Press Inquiries.

⁵⁴ *Id.*

⁵⁵ Dan Eggen, Gingrich Case Raises Question: What is a Lobbyist?, *Washington Post*, December 8, 2011 (attached as Exhibit 36).

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Transformation does not provide lobbying services nor directly or indirectly participate in lobbying activities of any kind.”⁵⁶

The facts, however, demonstrate Mr. Gingrich was acting on behalf of CHT, and not merely as a private citizen, when he lobbied for the Medicare bill. Most tellingly, after the bill was signed CHT bragged to its members it had worked with “key leaders in the House and Senate,” the Bush administration, and AARP to “help pass a transformational Medicare Bill,” and months later tried to recruit members by claiming “the Gingrich Team” was “instrumental” in shaping the legislation. Similarly undermining Mr. Gingrich’s recent claims that his lobbying was not on behalf of any client, Mr. Gingrich kept CHT members apprised of the bill’s progress throughout late 2003, then brought charter CHT members to President Bush’s bill signing.

Mr. Gingrich, CHT, and CHT’s members had a variety of financial motives for lobbying to pass the bill. As for Mr. Gingrich, helping pass the bill and taking credit for that could have - and apparently did - result in more companies joining CHT and paying its hefty membership fees. Separately, several CHT members, particularly those involved in drug manufacturing and electronic health care records, stood to benefit financially from the new Medicare prescription drug program and other provisions of the bill.

In addition, Mr. Gingrich and CHT cannot evade the LDA’s requirements simply by asserting they do not lobby or including provisions in contracts with members or clients disclaiming any lobbying. Neither can Mr. Gingrich evade the law by stating he was not employed or retained to make lobbying contacts, but rather was a private citizen merely voicing his opinion. Their actions, not their self-serving declarations, determine whether they were lobbying under the law. Otherwise, a gaping loophole in the LDA would be created, as lobbyists could avoid registration and reporting by simply asserting they were not employed or retained to make lobbying contacts, but rather were acting as citizens. For example, during the debate over the Medicare bill, the president of a drug manufacturer’s trade association could have asserted he personally believed the bill was good for the country, and therefore none of his communications with members of Congress were lobbying contacts.

Mr. Gingrich also claimed he was “not lobbying” because had taken a “public position” on the Medicare legislation.⁵⁷ Mr. Gingrich is mistaken that taking a public position on a bill means that any communications with covered officials about that legislation are not lobbying contacts. Under the LDA, a communication made in a speech, article, publication or otherwise

⁵⁶ See, e.g., Center for Health Transformation website, “Membership Benefits” page, available at: <http://www.healthtransformation.net/cs/membership> (attached as Exhibit 37).

⁵⁷ Hamby, *CNN*, Dec. 28, 2011.

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distributed broadly to the public is not a lobbying contact.⁵⁸ This exception, however, does not mean any other private communications with covered officials about the legislation are not lobbying contacts. Otherwise, registration and disclosure under the LDA could be defeated simply by taking a public position on an issue. Lobbyists routinely take public positions on legislation every day, then engage in lobbying contacts that require them to register.

Finally, an investigation is needed to determine whether, over any three month period, Mr. Gingrich spent more than 20 percent of his time providing services to CHT on lobbying activities. Under the LDA, "lobbying activities" broadly include lobbying contacts, all efforts in support of lobbying contacts, including preparation and planning activities, research, and other background work intended for use in contacts, as well as coordination with the lobbying activities of others.⁵⁹ During 2003, Mr. Gingrich clearly engaged in substantial lobbying activities on behalf of CHT, including the lobbying contacts and any preparation for them. Mr. Gingrich may have provided other services to CHT as well, but public information is not sufficient to determine if the lobbying activities, over any three month period, constituted more than 20 percent of all the time Mr. Gingrich spent providing services to CHT.

By failing to register as a lobbyist or lobbying organization, Mr. Gingrich, CHT, and/or the Gingrich Group appears to have violated the LDA.

Failure to file disclosure reports

The LDA also requires every registered lobbyist to file quarterly disclosure reports with the Clerk of the House and the Secretary of the Senate.⁶⁰ A search of the lobbying disclosure report database did not locate any reports for Mr. Gingrich, CHT, or the Gingrich Group. Accordingly, one or more of these entities appears to have violated the LDA.

Conclusion

Mr. Gingrich repeatedly contacted members of Congress and the Bush administration on behalf of CHT to lobby for the Medicare bill in 2003, and appears to have spent a substantial portion of the time he worked for CHT engaged in lobbying activities. By failing to register as a lobbyist or file any lobbying disclosure reports, Mr. Gingrich, CHT, and/or the Gingrich Group appear to have violated the LDA. The government has a responsibility to ensure everyone - even

⁵⁸ 2 U.S.C. § 1602(8)(B)(iii).

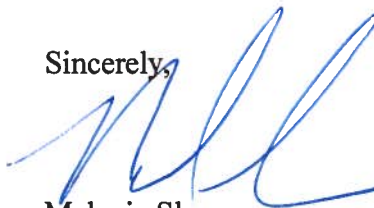
⁵⁹ 2 U.S.C. § 1602(7).

⁶⁰ 2 U.S.C. § 1604.

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former high ranking government officeholders - follows the law equally. As a result, CREW respectfully requests that the U.S. Attorney for the District of Columbia and the FBI immediately commence an investigation into this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'MS', is written over the word 'Sincerely,'.

Melanie Sloan
Executive Director

Encls.