

Bob, as Newt Gingrich's General Counsel and head of McKenna Long Aldridge's Political Law group, I read with interest your column today concerning the legal support for Newt Gingrich's conclusion that McCain Feingold imposed unacceptable restrictions on his intended exploratory effort. Your thesis appears to be that Newt Gingrich could have legally engaged in exploratory efforts while simultaneously heading American Solutions, a nonpartisan soft money 527. You wrote: "Risks can be mitigated, or in the best case, eliminated altogether" if only one has the appropriate legal minds behind him or her. You support this statement with an example that individuals in the exploratory phase can run their Leadership PACs and other 527s."

I respectfully submit that if you look more closely at the FEC's regulations concerning testing-the-waters committees that you will agree that holding up others' association with hard money Leadership PACs and 527s provides scant comfort to the head of a soft money political committee contemplating a testing the waters undertaking. As you know, if Newt Gingrich had opted ultimately to become a candidate for federal office, he would have had to disclose - with his first campaign disclosure - all contributions received in support of this exploratory effort as well as all expenditures toward that end. Moreover, all such contributions, both direct and in-kind, would have had to have been "hard" (within federal source and amount limitations).

Here, Newt Gingrich had requested that McKenna Long Aldridge partner Randy Evans undertake the assessment of Newt Gingrich's potential viability as a candidate. We were prepared to do so and had even worked past 5:00 p.m. on some evenings to ensure that we had mitigated the risks of an FEC complaint to the greatest extent possible. You will agree, I am sure, that an individual contemplating an exploratory effort would be obligated to ensure that no soft money could even arguably have been used to facilitate this effort. In a situation where a soft money 527, unlike a federal Leadership PAC or 527 which is not so clearly associated with the potential candidate, regularly expends soft money to promote the potential candidate's vision for "Real Change" in America, I am quite confident that your best legal advice would have been that the potential candidate disassociate completely, and permit the expenditure of no funds, toward any activity which could be construed in the eyes of the most skeptical of "reformers" as a secret effort to promote a candidacy with soft dollars or in-kinds. As we learned with the numerous allegations lodged against Newt Gingrich's "Renewing American Civilization" educational course, one can mitigate all risks, and be 100% correct on the law (we ultimately prevailed with the IRS and House

Ethics Committee on all substantive allegations), but still be forced to deal with reckless and false allegations.

While I do not disagree that legal firewalls were available to us to permit us to mount a legal exploratory effort, your posting misses the point in my opinion. One only explores the feasibility of being a candidate for office if one is prepared at the end of that process to become a candidate if certain circumstances are met. Simply stated, Newt Gingrich has said that the dramatic success of American Solutions this past week led him to conclude that there were no circumstances by which he would ultimately elect to become a candidate in light of the draconian restrictions imposed by McCain-Feingold when it comes to speech and issue advocacy. We have all always understood that McCain-Feingold now prohibits federal candidates from soliciting, directing, transferring, or spending funds in excess of the FECA source and amount restrictions. McCain-Feingold was not a surprise to us or to Newt Gingrich. Randy Evans and I filed an amicus brief on behalf of Speaker Dennis Hastert with the Supreme Court in McConnell challenging these very restrictions on Members and candidates. No election lawyer I know of would permit a candidate for federal office to in any way raise money for, assist, lead or even, goodness forbid, coordinate with an enterprise like American Solutions. It's a mutually exclusive option - one can raise money as a federal candidate or one can raise issues in the public square - but never both. With the success of American Solutions' Solutions Day, Newt Gingrich opted for issues over hard dollars.

Feel free to call or email any time if you wish to discuss these issues further.

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