

OFFICE OF
GENERAL COUNSEL

BEFORE THE
FEDERAL ELECTION COMMISSION

2023 APR 17 AM 7:12

TIFFANY MULLER
END CITIZENS UNITED
100 M STREET SE
WASHINGTON, D.C. 20003

Complainant,

v.

MUR # 8127

NICK LALOTA
PO BOX 113
LINDENHURST, NY 11757

LALOTA FOR CONGRESS
PO BOX 5744
HAUPPAUGE, NY 11788

THOMAS DATWYLER
IN HIS OFFICIAL CAPACITY AS TREASURER
PO BOX 183
HUDSON, WI 54016

LALOTA FOR NEW YORK L4NY
PO BOX 1027
AMITYVILLE, NY 11701

Respondents.

COMPLAINT

This complaint is filed under 52 U.S.C. § 30109(a)(1) against Nick LaLota, LaLota for Congress and Thomas Datwyler in his official capacity as treasurer (the “Federal Committee”), and Lalota for New York L4ny (the “State Committee”), collectively the “Respondents,” for violating the Federal Election Campaign Act of 1971, as amended (the “Act”) and Federal Election Commission (the “FEC” or “Commission”) regulations. Mr. LaLota not only made a direct contribution from his State Committee to his Federal Committee, but also appears to have used his State Committee to pay the expenses of his federal campaign. Subsidizing a federal

campaign with non-federal funds is the exact harm that the Bipartisan Campaign Reform Act sought to prevent and that the FEC enacted the transfer prohibition to avoid. Mr. LaLota's apparent violations grossly undermine the Act's anti-corruption and anti-circumvention rationales. The Commission should immediately investigate these apparent violations and take appropriate remedial action against Respondents.

FACTS

Nick LaLota was a candidate for New York State Senate in 2020, but was subsequently disqualified from the ballot by a court order in May 2020.¹ His state campaign committee is Lalota for New York L4ny ("Lalota for New York").² Lalota for New York remains an active committee with the New York Board of Elections.³ On February 21, 2022, Mr. LaLota filed a Statement of Candidacy with the Commission for the 2022 election in New York's First Congressional District.⁴ His principal campaign committee for federal office in 2022 was LaLota for Congress, with Thomas Datwyler serving as treasurer.⁵ At no time while a candidate for federal office was Mr. LaLota concurrently a candidate for state or local office in New York.

Two days after filing his statement of candidacy for New York's First Congressional District with the Commission, Mr. LaLota transferred \$1,000 from the State Committee to the Federal Committee.⁶ The memo notation with the contribution states that the contribution is from

¹ See Yancey Roy, *Appellate Court Disqualifies LaLota in Key LI State Senate Race*, *Newsday* (May 15, 2020), <https://www.newsday.com/long-island/politics/state-senate-appellate-division-n38627>.

² Lalota for New York L4ny, N.Y. State Bd. of Elections, <https://publicreporting.elections.ny.gov/CandidateCommitteeDisclosure/CandidateCommitteeDisclosure> (last visited April 3, 2023).

³ See *id.*

⁴ LaLota for Congress, FEC Form 1, Amended Statement of Organization (February 21, 2022), <https://docquery.fec.gov/cgi-bin/forms/C00806018/1571306>.

⁵ *Id.*

⁶ LaLota for Congress, Second Amended April Quarterly Report (March 31, 2022), <https://docquery.fec.gov/pdf/051/202212159562586051/202212159562586051.pdf>.

a “verified source.”⁷ Additionally, between May and July 2021, the State Committee made expenditures worth \$525 for “campaign literature” and “campaign mailings” to Steve Starlust, a vendor who had never previously been paid by the State Committee.⁸ After the State Committee stopped paying Steve Starlust, the Federal Committee began paying him – over \$18,000 – for “campaign consulting” in Mr. LaLota’s federal race.⁹

LEGAL DISCUSSION

A. Transfers from the State to Federal Committee

The Act prohibits federal candidates from transferring funds or assets from their state committees to their federal committees.¹⁰ The Commission considers direct contributions from a federal candidate’s state committee to his federal committee to be a “transfer” of funds.¹¹ Here, there is irrefutable evidence that Mr. LaLota’s State Committee directly transferred \$1,000 to the Federal Committee.¹² The transfer prohibition is a bright-line rule under 11 C.F.R. § 110.3(d), and it applies whether a contribution’s source has been “verified” or not. Therefore, Mr. LaLota and his Committees appear to have violated this prohibition and the Commission should immediately investigate.¹³

⁷ *Id.*

⁸ Lalota for New York L4ny, N.Y. State Bd. of Elections, 2021 July Periodic Itemized Original State/Local Report (July 26, 2021), <https://publicreporting.elections.ny.gov/CandidateCommitteeDisclosure/CandidateCommitteeDisclosure>; Lalota for New York L4ny, N.Y. State Bd. of Elections, 2022 January Periodic Itemized Original State/Local Report (Jan. 19, 2021), <https://publicreporting.elections.ny.gov/CandidateCommitteeDisclosure/CandidateCommitteeDisclosure>.

⁹ Fed. Election Comm’n, LaLota for Congress, Disbursements to Steve Starlust, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00806018&recipient_name=steve+starlust (last visited Apr. 3, 2023).

¹⁰ 11 C.F.R. § 110.3(d) (“Transfers of funds or assets from a candidate’s campaign committee or account for a nonfederal election to his or her principal campaign committee or other authorized committee for a federal election are prohibited.”).

¹¹ See Fed. Election Comm’n, First Gen. Counsel’s Rep., MUR 5406.

¹² LaLota for Congress, Second Amended April Quarterly Report (March 31, 2022), <https://docquery.fec.gov/pdf/051/202212159562586051/202212159562586051.pdf>.

¹³ See 11 C.F.R. § 110.3(d).

B. Excessive and Impermissible In-Kind Contributions

The Commission’s regulation at 11 C.F.R. § 110.3(d) likewise prohibits transfers from a federal candidate’s state to federal committee made through in-kind conveyances of goods or services.¹⁴ Here, Mr. LaLota’s state committee paid \$525 for “campaign literature” and “campaign mailings” to a vendor that was later paid by the Federal Committee after the State Committee stopped payments.¹⁵ At the time of these expenditures from the State Committee, Mr. LaLota was not a candidate for any state or local office in New York. Thus, there is no logical reason that his State Committee needed to make payments for “campaign literature” and “campaign mailings.” Rather it seems more likely that Mr. LaLota made these payments in connection with his federal campaign, which he was gearing up for at the time the State Committee made the disbursements. Therefore, the Commission should immediately investigate this potential violation, as these in-kind contributions would constitute unlawful contributions from the State Committee to the Federal Committee.

REQUESTED ACTION

As we have shown, Respondents appear to have violated the Act and Commission regulations by making prohibited transfers from the State to the Federal Committee. As such, we respectfully request that the Commission immediately investigate this apparent violation, fine Respondents the maximum amount permitted by law, require the Federal Committee to disgorge the unlawful funds it received from the State Committee, and enjoin Respondents from further violations of the law.

¹⁴ *Id.*; See Fed. Election Comm’n, MURs 5646, 5426; *see also* 11 C.F.R. § 100.52(a) (in-kind goods or services are contributions under the Commission’s regulations).

¹⁵ Lalota for New York L4ny, N.Y. State Bd. of Elections, 2021 July Periodic Itemized Original State/Local Report (July 26, 2021), <https://publicreporting.elections.ny.gov/CandidateCommitteeDisclosure/CandidateCommitteeDisclosure>; Lalota for New York L4ny, N.Y. State Bd. of Elections, 2022 January Periodic Itemized Original State/Local Report (Jan. 19, 2021), <https://publicreporting.elections.ny.gov/CandidateCommitteeDisclosure/CandidateCommitteeDisclosure>.

Sincerely,



TIFFANY MULLER
END CITIZENS UNITED
100 M STREET SE
WASHINGTON, D.C. 20003

SUBSCRIBED AND SWORN to before me this 11th day of April 2023



Notary Public

My Commission Expires:

MARK ANDREWS
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires July 14, 2024

