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**VIA EMAIL at [cela@fec.gov](mailto:cela@fec.gov)**

Wanda Brown  
Acting Assistant General Counsel  
Complaints Examination & Legal Administration  
Federal Election Commission  
1050 First Street, NE  
Washington, DC 20463

**Re: MUR 8127: Response of Rep. Nick LaLota, LaLota for Congress and Thomas Datwyler in his official capacity as treasurer, and LaLota for New York L4NY**

Dear Ms. Brown:

We represent Congressman 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”), and we write in response to your letter regarding the Complaint filed in the above-referenced matter. The Complaint alleges that Respondents violated the Federal Election Campaign Act of 1971, as amended (the “Act”), by transferring \$1,000 from the State Committee to the Federal Committee, and by spending State Committee funds to promote Rep. LaLota’s federal candidacy. These allegations, however, are based on an incorrect reading of the Act, and are supported by no actual evidence of wrongdoing. Instead, the Complaint relies entirely on speculation and innuendo, assuming that any spending by the State Committee must have been impermissible in-kind contributions to the Federal Committee. The Commission has made clear that such unsupported allegations cannot provide the basis for a reason to believe finding. Accordingly, the Commission should find no reason to believe a violation occurred and close the file.

**Discussion.***A. Contribution from State to Federal Committee*

The Complaint first alleges that Respondents violated the Act by the State Committee making a \$1,000 transfer to the Federal Committee. As the Complaint accurately explains, the Act and Commission regulations prohibit the transfer of funds or assets from a nonfederal campaign committee to the federal campaign committee of the same candidate. *See* 11 C.F.R. § 110.3(d). The Complaint misses the mark, however, because it conflates the definitions of a transfer and a contribution. The \$1,000 disbursement here was not a transfer of funds, but instead was a permissible contribution from a nonfederal entity within the limits of the Act.

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A review of the Act and Commission regulations makes clear that transfers and contributions are distinct activities and not interchangeable terms. For instance, an “Agent” under Commission regulations is, among other things, a person with express or implied authority “[t]o solicit, direct, or receive any **contribution, donation, or transfer of funds...**” *Id.* § 300.2(b)(1)(i) (emphasis added). Contributions and transfers of funds are reported separately on a committee’s periodic reports. *See id.* § 104.3(a). Indeed, a transfer of funds can generally be made in any amount and is not subject to the Act’s contribution limit. *See id.* § 110.3(c).

Contributions from nonfederal committees to federal committees are permitted so long as the nonfederal committee has sufficient permissible funds on hand to make the contribution. *See id.* §§ 100.5, 300.61. Here, the State Committee made a permissible \$1,000 contribution to the Federal Committee within the limits of the Act, which was reported as a contribution, not a transfer, on the Federal Committee’s campaign finance report. A review of the State Committee’s state filings shows, and the Complaint contains no information to dispute, that the State Committee had sufficient permissible funds at the time the contribution was made. As a result, there is no violation of the Act, and the Commission should find no reason to believe that the State Committee impermissibly transferred funds to the Federal Committee.

#### *B. Permissible State Expenditures by the State Committee*

The Complaint next alleges that the Respondents violated the Act by using the State Committee’s funds to support LaLota’s federal candidacy. This allegation appears to be supported solely on two disbursements by the State Committee, one on July 14, 2021, for \$200 in “campaign mailings,” and another on May 18, 2021, for \$325 for “campaign literature” to a vendor the Federal Committee would later contract with for similar work. LaLota declared his congressional candidacy on February 2022, more than seven months after the last disbursement the Complaint alleges constituted an in-kind contribution from the State Campaign to the Federal Campaign. The Complaint includes no information to suggest that the State Committee’s disbursements were in any way connected to a federal election, and instead relies solely on the vague statement that LaLota was “gearing up” to run for Congress when the disbursements were made.

On several occasions the Commission has explained that mere speculation is not enough to support a reason to believe finding and allegations must be substantiated with specific evidence of wrongdoing. For instance, in MUR 7421, the Commission found no reason to believe campaign funds were used for personal travel because “[t]he Complaint [did] not point to any specific information to support its allegation, instead relying on an assertion that the amount of the reimbursements seemed excessive compared to a general impression of how much the [candidate] could have reasonably traveled for the campaign during the relevant time period.”<sup>1</sup> Similarly here, the Complaint contains no information to support its assertion that the State Committee’s disbursements were for federal activity, instead relying on the timing and common vendor.

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<sup>1</sup> Factual and Legal Analysis at 5, MUR 7421 (Cramer for Senate, *et al.*).

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Because there is no information in the Complaint to support its allegations, the Commission must find no reason to believe a violation occurred. “The standard, after all, is ‘reason to believe,’ not reason to question.”<sup>2</sup> “[M]ere ‘official curiosity’ will not suffice as the basis for FEC investigations.”<sup>3</sup> “The burden of proof does not shift to a respondent merely because a complaint is filed.”<sup>4</sup> For these reasons, we respectfully request that the Commission find no reason to believe a violation occurred and close the file.

Sincerely,



*Counsel to Rep. Nick LaLota,  
LaLota for Congress and Thomas  
Datwyler in his official capacity as  
treasurer, and LaLota for New York L4NY*

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<sup>2</sup> Statement of Reasons of Vice Chair Allen Dickerson and Commissioners Sean J. Cooksey and James E. “Trey” Trainor III at fn. 31 (Oct. 8, 2021), MUR 7753 (Everytown for Gun Safety Action Fund, *et al.*)

<sup>3</sup> *FEC v. Machinists Non-Partisan Political League*, 655 F.2d 380, 388 (D.C. Cir. 1981).

<sup>4</sup> Statement of Reasons of Chairman Darryl R. Wold and Commissioners David M. Mason and Scott E. Thomas at 2 (July 20, 2000), MUR 4850 (Deloitte & Touche, LLP, *et al.*).