



June 5, 2023

VIA EMAIL at 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 8128: Response of Rep. Anthony D'Esposito et al.

Dear Ms. Brown:

We represent Congressman Anthony D'Esposito, Citizens for D'Esposito (the "State Committee"), and D'Esposito for New York and Claudia Armendinger in her official capacity as treasurer (the "Federal 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, by spending State Committee funds to promote Rep. D'Esposito's federal candidacy, and by the State Committee raising and spending soft money after Rep. D'Esposito became a federal candidate. These allegations, however, are based on a strained 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.

Factual Background.

In 2016, Anthony D'Esposito was appointed to the Hempstead, NY Town Council. He was elected to a full term in 2017, forming Citizens for D'Esposito as his campaign committee. On March 16, 2023, D'Esposito announced his congressional candidacy and formed D'Esposito for New York. D'Esposito continued to serve on the Hempstead Town Council until 2023 when he resigned to be sworn in as a member of the United States House of Representatives.

Response of Rep. Anthony D'Esposito, et al.

MUR 8128

Page 2

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.

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 is generally without limit and 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 D’Esposito’s federal candidacy. This allegation appears to be supported solely on conclusory assumptions that 1) any disbursement made by the State Committee after D’Esposito became a federal candidate must have been for federal purposes, and 2) the State Committee reported a disbursement for a post office box in Washington, DC. The Complaint concludes, without citation to state law, that D’Esposito could not be considered a state or local candidate because his next election was three years away.

Fatal to the complainant’s argument, “candidate” is a defined term under New York law, and means:

an individual who seeks nomination for election, or election, to any public office or party position to be voted for at a primary, general or special or New York city community school district election,... whether or not the

Response of Rep. Anthony D'Esposito, et al.

MUR 8128

Page 3

public office or party position has been specifically identified at such time and whether or not such individual is nominated or elected, and, ... an individual shall be deemed to seek nomination for election, or election, to an office or position, if he has (1) taken the action necessary to qualify himself for nomination for election, or election, or (2) received contributions or made expenditures, given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination for election, or election, to any office or position at any time whether in the year in which such contributions or expenditures are made or at any other time. NY ELEC § 14-100(7).

It cannot be disputed that D'Esposito was a qualified candidate under New York law at all times until his resignation in 2023. Since D'Esposito's election in 2017, the State Committee raised and spent thousands of dollars and filed continuous campaign finance reports with the state, all "with a view to bringing about his nomination for" reelection to the Town Council. That his election was three years away at the time these disbursements were made is of no consequence. Sitting U.S. Senators would be shocked by an interpretation that they can only raise and spend funds during an election cycle in which they appear on the ballot.

The Complaint's claim that the State Committee opened a post office box in Washington, DC is inaccurate. In actuality, the State Committee used the U.S. Postal Service's ("USPS") website to create an online post office box, and the receipt provided by USPS, which was then given to the State Committee's treasurer for reporting, listed a Washington, DC address. A search of FEC periodic reports shows several committees not located in DC reporting similar addresses for the payment of their own online PO boxes.

As to the other alleged impermissible expenses such as phones, office rental, or mailings, the Complaint has failed to show any evidence that they were used for federal activity. Many of the expenses the Complaint questions were incurred well before D'Esposito became a federal candidate but, because of billing and payment cycles, were billed and paid weeks later. This is common for political committee reports. Moreover, D'Esposito remained a New York candidate and elected official until his resignation in 2023, and it stands to reason that the State Committee would continue to incur and pay its own operating and fundraising expenses until the resignation.

Finally, there is no evidence to suggest that D'Esposito's golf outing was to support his federal candidacy. The golf outing is an annual event that was planned well before D'Esposito's federal candidacy. There is no information to suggest that he raised federal dollars at the event nor that the content of the event focused on promoting his federal candidacy. A single Facebook post from an unrelated third party making passing reference to D'Esposito's federal candidacy is not enough to turn the annual golf outing into a federal campaign event. The Commission should find no reason to believe a violation occurred with respect to the State Committee's spending.

Response of Rep. Anthony D'Esposito, et al.

MUR 8128

Page 4

C. State Committee's Permissible Activity

Lastly, the Complaint alleges that Respondents violated the Act's soft money prohibition by raising and spending soft dollars after D'Esposito became a federal candidate. As you know, the Act and Commission regulations prohibit a federal candidate or officeholder from raising or spending soft dollars. *Id.* §§ 300.61, 300.62. There is an exception, however, for federal candidates who are also state or local candidates. *See id.* § 300.63. Pursuant to the exception, the soft dollars prohibition does not apply to raising and spending related a federal candidate's own simultaneous state or local candidacy. *Id.*

As discussed above, D'Esposito was a New York candidate until his resignation in 2023. The Complaint makes no attempt to dispute that other than the irrelevant statement that D'Esposito's next election was "more than three years away." New York's definition of "candidate" is very broad, and the State Committees activity clearly caused D'Esposito to meet that definition. Accordingly, the Act's soft money prohibition doesn't apply.

Conclusion

Here, the Complaint contains no evidence to support its allegations and therefore cannot form the basis of a reason to believe finding. "[P]urely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find reason to believe that a violation of the [law] has occurred."¹ "[M]ere 'official curiosity' will not suffice as the basis for FEC investigations."² Accordingly, the Commission must find no reason to believe a violation occurred and close the file.

Respectfully submitted,



*Counsel to Congressman Anthony D'Esposito,
Citizens for D'Esposito, and D'Esposito for
New York and Claudia Armendinger in her
official capacity as treasurer*

¹ Statement of Reasons of Vice Chair Allen Dickerson and Commissioners Sean J. Cooksey and James E. "Trey" Trainor III at 2 (June 28, 2021), MUR 7501 (Bill Nelson for U.S. Senate, et al.) (quoting Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas at 3 (Dec. 21, 2000), MUR 4960 (Hillary Rodham Clinton for Senate)).

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