

**FEDERAL ELECTION COMMISSION  
FIRST GENERAL COUNSEL'S REPORT**

**MUR 8128**

DATE COMPLAINT FILED: Apr. 18, 2023

DATE OF NOTIFICATIONS: Apr. 22, 2023

DATE OF LAST RESPONSE: June 5, 2023

DATE ACTIVATED: Oct. 13, 2023

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EXPIRATION OF SOL: Dec. 9, 2026-

Nov. 2, 2027

ELECTION CYCLE: 2022

**COMPLAINANT:**

Tiffany Muller

End Citizens United

**RESPONDENTS:**

D'Esposito for New York and Claudia Armendinger

in her official capacity as treasurer

Citizens for D'Esposito (terminated)

Anthony D'Esposito

**RELEVANT STATUTE****AND REGULATIONS:**

52 U.S.C. § 30125(e)(1)(A)-(B), (2)

11 C.F.R. § 110.3(d)

11 C.F.R. § 300.61

11 C.F.R. § 300.62

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**AGENCIES CHECKED:**

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**I. INTRODUCTION**

The Complaint in this matter alleges that 2022 U.S. House candidate Anthony D'Esposito, D'Esposito for New York and Claudia Armendinger in her official capacity as treasurer (the "Federal Committee"), and Citizens for D'Esposito (the "State Committee") (collectively, "Respondents") violated the soft money prohibitions of the Federal Election Campaign Act of 1971, as amended (the "Act") and Commission regulations in several ways. First, the Complaint alleges that D'Esposito and the Federal Committee accepted a prohibited

1 \$1,000 transfer from the State Committee.<sup>1</sup> Second, it alleges that the State Committee made in-  
2 kind contributions totaling \$123,218.44 to the Federal Committee by paying for several of  
3 D'Esposito's federal campaign expenses.<sup>2</sup> Finally, the Complaint alleges that the State  
4 Committee received a minimum of \$44,410 in corporate contributions after D'Esposito became a  
5 federal candidate in apparent violation of 11 C.F.R. §§ 300.61-300.62 and the Act's soft money  
6 prohibitions.<sup>3</sup>

7         The Respondents submitted a Joint Response that admits that the State Committee  
8 transmitted \$1,000 to the Federal Committee but claims that such a transmission was not a  
9 prohibited transfer, but rather a contribution.<sup>4</sup> Respondents assert that contributions from  
10 nonfederal committees to federal committees are permitted so long as the nonfederal committee  
11 has sufficient permissible funds to make the contribution, and that "the State Committee had  
12 sufficient permissible funds at the time the contribution was made."<sup>5</sup> As to the allegations that  
13 the State Committee paid for D'Esposito's federal campaign expenses, the Response asserts that  
14 D'Esposito remained a viable candidate for re-election to his town council position until his  
15 resignation, and thus the alleged in-kind contributions were legitimate expenses for a nonfederal  
16 candidate.<sup>6</sup> Finally, the Response asserts that, because D'Esposito was a viable candidate for  
17 both federal and local offices, he was eligible for the "dual-candidate exception," in which the

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<sup>1</sup> Compl. at 1, 3 (Apr. 18, 2023).

<sup>2</sup> *Id.* at 1, 3-4, Exs. A-C.

<sup>3</sup> *Id.* at 1-2, 6-7, Ex. D.

<sup>4</sup> Resp. at 2 (June 6, 2023).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 2-3.

1 soft money prohibition did not apply “to raising and spending relating [to] a federal candidate’s  
2 own simultaneous state or local candidacy.”<sup>7</sup>

3 For the reasons set forth below, we recommend that the Commission dismiss as matter of  
4 prosecutorial discretion the allegation that Respondents violated 52 U.S.C. § 30125(e)(1)(A) and  
5 11 C.F.R. § 110.3(d) in connection with the State Committee’s \$1,000 contribution to the  
6 Federal Committee.<sup>8</sup> Given the flexibility in New York State law regarding the definition of a  
7 candidate and D’Esposito’s viability as a dual candidate during the relevant timeframe, coupled  
8 with the lack of sufficient information provided by the Complaint, we also recommend that the  
9 Commission dismiss the allegation that D’Esposito and the State Committee violated 52 U.S.C.  
10 § 30125(e)(1)(A) and 11 C.F.R. §§ 110.3(d) and 300.61 by receiving and spending nonfederal  
11 funds in connection with an election to nonfederal office. Finally, for the same reasons, we  
12 recommend that the Commission dismiss the allegation that the Federal Committee violated 52  
13 U.S.C. § 30125(e)(1)(A)-(B) and 11 C.F.R. §§ 300.61-.300.62 by receiving and spending  
14 corporate contributions from the State Committee in connection with an election to federal  
15 office.

## 16 **II. FACTUAL BACKGROUND**

17 Anthony D’Esposito is the U.S. Representative for New York’s Fourth Congressional  
18 District, having won election to federal office in 2022.<sup>9</sup> He filed his initial Statement of  
19 Candidacy on March 16, 2022.<sup>10</sup> D’Esposito for New York is his principal campaign committee,

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<sup>7</sup> *Id.* at 4; *see also* 11 C.F.R. § 300.63.

<sup>8</sup> *See Heckler v. Chaney*, 470 U.S. 821 (1985).

<sup>9</sup> *See, e.g., New York Fourth Congressional District Election Results*, N.Y. TIMES (Dec. 16, 2022), <https://nytimes.com/interactive/2022/11/08/us/elections/results-new-york-us-house-district-4.html>.

<sup>10</sup> D’Esposito For New York, Statement of Organization (Mar. 26, 2022), <https://docquery.fec.gov/pdf/764/202203169493959764/202203169493959764.pdf>.

1 with Claudia Armendinger serving as treasurer.<sup>11</sup> Prior to serving in Congress, D’Esposito was a  
2 member of the Hempstead, New York town council from 2016 to 2022,<sup>12</sup> winning re-election in  
3 2021.<sup>13</sup> His now-terminated state campaign committee was Citizens for D’Esposito.<sup>14</sup>

4 The Complaint alleges that D’Esposito and the Federal Committee violated 11 C.F.R.  
5 § 110.3(d) by accepting \$1,000 from the State Committee.<sup>15</sup> The Complaint also alleges that the  
6 Respondents violated 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. §§ 110.3(d) and 300.61 because  
7 it contends that the State Committee paid for the federal campaign’s expenses, and specifically  
8 cites to the State Committee’s payment of \$23,247.90 for print and online advertising, rent, cell  
9 phones, volunteer expenses and mail services,<sup>16</sup> as well as a payment of \$2,199.91 to a printing  
10 and fundraising vendor.<sup>17</sup> The Complaint further alleges that the State Committee spent over  
11 \$97,850.63 in connection with a golf fundraiser, which the Complaint contends was to benefit  
12 D’Esposito’s federal campaign.<sup>18</sup> In support of this allegation, the Complaint points to the fact  
13 that D’Esposito had won re-election to his position on the Hempstead town council in 2021, and  
14 because the next election was over three years away, D’Esposito could not credibly be

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<sup>11</sup> *Id.*

<sup>12</sup> *See About*, CONGRESSMAN ANTHONY D’ESPOSITO, <https://desposito.house.gov/about> (last visited Feb. 8, 2024).

<sup>13</sup> *See About Anthony D’Esposito*, D’ESPOSITO FOR CONGRESS, <https://despositoforcongress.com/about-anthony> (last visited Feb. 8, 2024).

<sup>14</sup> *Candidate/Committee Disclosures Search*, N.Y. STATE BD. OF ELECTIONS, <https://publicreporting.elections.ny.gov/CandidateCommitteeDisclosure/CandidateCommitteeDisclosure> (search “Citizens for D’Esposito”) (last visited Feb. 8, 2024).

<sup>15</sup> Compl. at 1, 3-4; see also *Candidate/Committee Disclosures Search*, N.Y. STATE BD. OF ELECTIONS, <https://publicreporting.elections.ny.gov/CandidateCommitteeDisclosure/CandidateCommitteeDisclosure> (search “Citizens for D’Esposito,” then navigate to 2022 filings and select Amended 27-Day Post-Special Itemized State/Local Report (May 11, 2022)) (last visited Feb. 8, 2024) [hereinafter State Committee Amended 27-Day Report].

<sup>16</sup> Compl. at 3-4, 4-6; *id.*, Ex. A-B.

<sup>17</sup> *See* State Committee Amended 27-Day Report.

<sup>18</sup> Compl. at 3-4, 4-6; *id.*, Ex. C.

1 considered a viable local candidate.<sup>19</sup> Therefore, the Complaint concludes that the  
2 aforementioned expenses must have been related to his federal campaign.<sup>20</sup> Finally, the  
3 Complaint alleges that the State Committee's receipt of \$123,218.44 in corporate contributions  
4 after D'Esposito became a federal candidate must have been related to his federal campaign, and  
5 thus violated 52 U.S.C. § 30125(e)(1)(A)-(B) and 11 C.F.R. §§ 300.61, 300.62.<sup>21</sup>

6 The Response, which was submitted on behalf of all the Respondents, admits that the  
7 State Committee transmitted \$1,000 to the Federal Committee but contends that the transmission  
8 was a "contribution" and not a "transfer."<sup>22</sup> The Response states that "contributions from  
9 nonfederal committees to federal committees are permitted so long as the nonfederal committee  
10 has sufficient permissible funds on hand to make the contribution" and that State Committee  
11 filings show that it had sufficient permissible funds to make the contribution at issue here.<sup>23</sup> As  
12 to the allegation that the State Committee paid for D'Esposito's federal campaign expenses, the  
13 Response asserts that, at all times relevant to the Complaint, D'Esposito was a viable local  
14 candidate under New York state law.<sup>24</sup> Moreover, the Response asserts that the aforementioned  
15 expenses were local election-related and that the Complaint "failed to [demonstrate] that they  
16 were used for federal activity."<sup>25</sup> Finally, the Response asserts that the State Committee's

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<sup>19</sup> Compl. at 2, 5.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 6-7; State Committee Amended 27-Day Report, Ex. D.

<sup>22</sup> Resp. at 2.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 2-3.

<sup>25</sup> *Id.*

1 receipt of contributions from corporate donors was permissible because D’Esposito was a dual  
2 candidate as defined under the Act.<sup>26</sup>

### 3 III. LEGAL ANALYSIS

4 The Act and Commission regulations prohibit candidates, individuals holding Federal  
5 office, agents of a candidate or an individual holding Federal office, or an entity directly or  
6 indirectly established, financed, maintained, or controlled (“EFMC”) by or acting on behalf of  
7 one or more candidates or individuals holding Federal office from “solicit[ing], receiv[ing],  
8 direct[ing], transfer[ing], or spend[ing] funds in connection with an election for Federal office,  
9 including funds for any Federal election activity, unless the funds are subject to the limitations,  
10 prohibitions, and reporting requirements of this Act”<sup>27</sup> and from “solicit[ing], receiv[ing],  
11 direct[ing], transfer[ing], or spend[ing] funds in connection with” a nonfederal election unless  
12 the funds are subject to the Act’s amount limitations and source prohibitions.<sup>28</sup>

13 The Commission has determined that a state campaign committee of a federal candidate  
14 is, as a matter of law, EFMC’d by the federal candidate and is acting on the candidate’s behalf.<sup>29</sup>  
15 However, a federal candidate is exempted from these prohibitions where “the solicitation, receipt  
16 or spending of funds [is] by an individual . . . who is or was also a candidate for a State or local  
17 office [and the solicitation, receipt, or spending of funds is] solely in connection with such an

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<sup>26</sup> *Id.* at 4.

<sup>27</sup> 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. § 300.61.

<sup>28</sup> 52 U.S.C. § 30125(e)(1)(B); 11 C.F.R. § 300.62.

<sup>29</sup> *See* Factual & Legal Analysis (“F&LA”) at 8-9, MUR 7853 (Lance Harris, *et al.*); F&LA at 6, MUR 7337 (Debbie Lesko, *et al.*); F&LA at 9, MUR 7246 (Buddy Carter for Congress, *et al.*); F&LA at 4, MUR 6985 (Zeldin for Senate, *et al.*) (citing Advisory Opinion (“AO”) 2009-26 at 5 (Coulson), AO 2007-01 at 3 (McCaskill); F&LA at 9, MUR 6601 (Oelrich for Congress)).

1 election for State or local office [and] the solicitation, receipt, or spending of funds is permitted  
2 under State law and refers only to such State or local candidate . . . .”<sup>30</sup>

3 Transfers of funds or assets from a candidate’s campaign account for a nonfederal  
4 election to his or her principal campaign committee for a federal election are also prohibited.<sup>31</sup>  
5 Accordingly, a candidate’s state committee’s funds must be kept separate from her federal  
6 committee’s funds.<sup>32</sup> The prohibition on transferring funds or assets applies broadly and  
7 includes payment by the state committee for goods or services to the federal committee.<sup>33</sup> The  
8 Commission, however, permits the transfer of a nonfederal committee’s assets to the campaign  
9 committee of a candidate for federal office if such transfer is conducted under current market  
10 practices and at the usual and normal charges.<sup>34</sup> The provisions at 52 U.S.C. § 30125(e) and  
11 11 C.F.R. § 110.3(d) are designed to prevent the use of funds that are outside the limitations and  
12 prohibitions of the Act in federal elections, and to ensure that all funds used in federal elections  
13 are reported.<sup>35</sup>

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<sup>30</sup> 52 U.S.C. § 30125(e)(2); *see also* 11 C.F.R. § 300.63.

<sup>31</sup> 11 C.F.R. § 110.3(d); *see also* Transfer of Funds from State to Federal Campaigns, 58 Fed. Reg. 3474, 3475 (Jan. 8, 1993). Although not specifically referenced in the Complaint, 52 U.S.C. § 30125(l)(A) also appears to apply to this situation. *See* Gen. Counsel’s Rpt. (“GCR”) at 1, MUR 6340 (McDowell for Congress, *et al.*).

<sup>32</sup> 11 C.F.R. § 110.3(d).

<sup>33</sup> F&LA at 5, MUR 6267 (Paton For Senate, *et al.*) (stating that candidate’s federal committee “effectively received prohibited transfer of funds in violation of [52 U.S.C. § 30125(e)] and 11 C.F.R. § 110.3(d) when the candidate’s state committee paid for expenses that were incurred in connection with his federal election”); F&LA at 12-16, MUR 5646 (Cohen for N.H.) (finding that candidate’s federal committee received prohibited transfer of funds when he used state campaign funds to pay for federal campaign expenses); Conciliation Agreement ¶¶ IV.11, V.1-2, MUR 4974 (Friends of Tiberi, *et al.*) (stating that candidate’s federal and state committees violated 11 C.F.R. § 110.3(d) when his state committee paid for expenses incurred on behalf of his federal committee); *see also* First Gen. Counsel’s Rpt. (“First GCR”) at 3, MUR 5416 (Wayne Christian, *et al.*) (“Since section 110.3(d) also refers to the transfer of assets, it may apply to the allegations concerning [candidate’s] use of the car purchased with state campaign funds . . . in connection with [candidate’s] federal race.”).

<sup>34</sup> *See* Transfer of Assets from State to Federal Campaigns, 58 Fed. Reg. 3474, 3475 (Jan. 8, 1993); Advisory Opinion 1992-19 (Mike Kreider for Congress Committee). When the state committee does not own the asset transferred, the federal committee must pay the usual and normal charge for use of the asset to the proper owner. *See* 11 C.F.R. § 100.52(d).

<sup>35</sup> F&LA at 4, MUR 7109 (Portantino).

1           **A.     The Commission Should Dismiss, Pursuant to *Heckler*, the Allegation That**  
2           **Respondents Violated 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d) in**  
3           **Connection with the State Committee’s \$1,000 Contribution to the Federal**  
4           **Committee**

5  
6           In the instant matter, the Response concedes and the committees’ disclosure reports  
7 confirm that the Federal Committee accepted \$1,000 from the State Committee.<sup>36</sup> Respondents  
8 acknowledge that “the Act and Commission regulations prohibit the transfer of funds or assets  
9 from a nonfederal campaign committee to the federal campaign committee of the same  
10 candidate.”<sup>37</sup> Nevertheless, Respondents contend that the deposit to the federal committee was  
11 not a *transfer* of funds, and was instead a *contribution* by the state committee and thus  
12 permissible.<sup>38</sup>

13           Respondents’ argument is unavailing for several reasons. First, Respondents seek to  
14 transform a prohibited action into a permitted one by simply relabeling the action, without  
15 providing any authority in support of such a recharacterization. Rather, the Commission has  
16 previously found that such a provision of funds from a federal candidate’s state committee to  
17 their federal committee constitutes a transfer.<sup>39</sup>

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<sup>36</sup> Resp. at 2; *see also* State Committee Amended 27-Day Report.

<sup>37</sup> Resp. at 2; *see also* 11 C.F.R. § 110.3(d).

<sup>38</sup> Resp. at 2.

<sup>39</sup> First GCR at 10-11 & Cert. ¶¶ 1-2, MUR 5406 (*Friends of Dan Hynes, et al.*) (reflecting unanimous approval of recommendation to find reason to believe, send a letter of admonishment, and require disgorgement where state committee made \$1,000 transfer to federal committee); First GCR at 10-11 & Cert. at ¶¶ 3 and 5, MUR 5304 (*Friends of Dennis Cardoza, et al.*) (reflecting unanimous approval of recommendation to find reason to believe and send a letter of admonishment where state committee made \$1,000 transfer to federal committee and federal committee subsequently refunded the funds); First GCR at 18 & Cert. ¶ 4, MUR 5446 (*Citizens for Welch, et al.*) (reflecting Commission’s unanimous approval of recommendation to find reason to believe and send a letter of admonishment where state committee made two \$1,000 transfers to federal committee but later issued a refund). *Cf.*, GCR at 1, 3 & Cert., MUR 6340 (*McDowell for Congress, et al.*) (reflecting Commission’s unanimous approval of a dismissal under the Enforcement Priority System where a state committee made a \$1,000 transfer to federal committee, reported it as a contribution, and federal committee acknowledged impermissible activity and took remedial action).



1           Second, 11 C.F.R. § 110.3(d) was intended to address the exact action at issue here.<sup>40</sup>  
2           According to the Commission’s Explanation and Justification regarding “Transfer of Funds  
3           From State to Federal Campaigns,” this regulation was intended to prohibit “transfers of cash or  
4           other assets from state campaign committees to federal campaign committees.”<sup>41</sup> This  
5           regulatory scheme was adopted because “[m]any states allow individuals to make contributions  
6           to state candidates that would exceed FECA limits....[and] allow corporations and labor  
7           organizations to make contributions to state candidates.”<sup>42</sup> In adopting the regulation, the  
8           Commission was “also concerned about the indirect use of impermissible funds in federal  
9           elections . . . consequently, the Commission has decided to promulgate new rules that would  
10          more effectively prevent the indirect use of impermissible funds in federal elections.”<sup>43</sup>

11          Accordingly, there is sufficient information to find reason to believe that the Respondents  
12          violated 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d) in connection with the State  
13          Committee’s direct transfer of funds to the Federal Committee. However, in light of the low  
14          amount of the transfer, we recommend that the Commission instead dismiss the allegation as an  
15          exercise of prosecutorial discretion.<sup>44</sup>

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<sup>40</sup> Respondents assert that contributions from nonfederal committees to federal committees are permissible “so long as [a] nonfederal committee has sufficient permissible funds to make the contribution.” Resp. at 2. Respondents cite 11 C.F.R. §§ 100.5 and 300.61 to support their contention. *Id.* 11 C.F.R. § 100.5 provides definitions of political committees, while 11 C.F.R. § 300.61 addresses soft money prohibitions; neither regulation supports Respondents’ assertion.

<sup>41</sup> 58 Fed. Reg. 3474, 3475 (Jan. 8, 1993).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> See *Heckler v. Chaney*, 470 U.S. 821 (1985). See also, e.g., F&LA at 2, MUR 7367 (Anthony J. Brindisi, *et al.*) (dismissing matter involving two \$1,000 contributions from a state campaign committee based on the *de minimis* amount in violation and issued a reminder letter); F&LA at 1-3, MUR 7338 (Rick for Congress, *et al.*) (dismissing matter involving \$955 transfer from state committee to federal committee).

1           **B.     The Commission Should Dismiss, Pursuant to *Heckler*, the Allegation That**  
2           **the State and Federal Committees Violated 52 U.S.C. § 30125(e)(1)(A) and 11**  
3           **C.F.R. §§ 110.3(d) and 300.61 by Receiving and Spending Nonfederal Funds**  
4           **in Connection with a Federal Election Because D'Esposito Was a Candidate**  
5           **for Local Office**

6           The Complaint alleges that D'Esposito's federal campaign received impermissible  
7           contributions from his State Committee through the State Committee's payments for alleged  
8           federal campaign expenditures. Specifically, the Complaint refers to D'Esposito's State  
9           Committee expenditures for, *inter alia*, "print and online advertising, rent, cell phones, volunteer  
10          expenses and mail services."<sup>45</sup> The Complaint alleges that these expenditures must have been  
11          related to D'Esposito's federal campaign because he had recently been elected to his position on  
12          the local town council, and the expenditures occurred at a time where the next town council  
13          election was over three years away.<sup>46</sup> The Complaint concludes that, during the relevant  
14          timeframe, D'Esposito's federal campaign was "his only active campaign."<sup>47</sup>

15          If the State Committee's expenditures were made in connection with D'Esposito's federal  
16          candidacy, the State Committee would have made, and Federal Committee would have received,  
17          a prohibited in-kind contribution.<sup>48</sup> However, 52 U.S.C. § 30125(e)(2) provides an exemption

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<sup>45</sup> Compl. at 3-5.

<sup>46</sup> *Id.* at 2, 5.

<sup>47</sup> *Id.* at 3.

<sup>48</sup> See F&LA at 11, MUR 6447 (Steele for Maryland) ("[I]f State Committee funds were used to pay federal campaign expenses, the Federal Committee would have received prohibited in-kind contributions from the State Committee in violation of [52 U.S.C. § 30125(e)(1)(A)] and 11 C.F.R. § 110.3(d)."); F&LA at 3, MUR 6219 (Kuhl) ("[T]he Federal Committee received prohibited in-kind contributions from the State Committee, in violation of [52 U.S.C. § 30125(e)(1)(A)] and 11 C.F.R. § 110.3(d)."); F&LA at 5, MUR 6267 (Paton) (The Commission found that Jonathan Paton, Paton for Senate and Jonathan Paton, in his official capacity as Treasurer, violated [52 U.S.C. 30125 (e)(1)(A)] and 11 C.F.R. § 110.3(d) by making and receiving prohibited in-kind contributions of non-federal funds in connection with an election for federal office.); F&LA at 5, MUR 5480 (Levetan) (The Commission found that transfer of in-kind contributions (polling services) from the State Committee to the Federal Committee, violated [52 U.S.C. § 30125(e)(1)(A)] and 11 C.F.R. § 110.3(d).); see also F&LA at 4, MUR 7109 (Portantino) ("The provisions at 52 U.S.C § 30125(e) and 11 C.F.R. § 110.3(d) are designed to prevent the use of funds that are outside the limitations and prohibitions of the Act in federal elections, and to ensure that all funds used in federal elections are reported.").

1 “to the solicitation, receipt, or spending of funds by an individual . . . *who is or was also a*  
2 *candidate* for State or local office solely in connection with such election for State or local office  
3 if the solicitation, receipt, or spending of funds is permitted under State law and refers only to  
4 State or local candidate . . . .”<sup>49</sup> The Commission has explained that the purpose of the “dual  
5 candidate” exception is “to provide an equitable basis for a Federal officeholder or candidate to  
6 conduct his or her campaign for non-Federal office so that he or she is not financially  
7 disadvantaged when competing with a non-Federal opponent who may raise and spend funds  
8 without the same restrictions that section [30125(e)] imposes on Federal candidates and  
9 officeholders.”<sup>50</sup> Here, the applicable New York law defines a “candidate” as:

10 an individual who seeks nomination for election, or election, to any  
11 public office or party position . . . whether or not the public office  
12 or party position has been specifically identified at such time and  
13 whether or not such an individual is nominated or elected, and, . . .  
14 an individual shall be deemed to seek nomination for election, or  
15 election, to an office or position, if he has (1) taken the action  
16 necessary to qualify himself for nomination for election, or  
17 election, or (2) received contributions or made expenditures, given  
18 his consent for any other person to receive contributions or make  
19 expenditures, with a view to bringing about his nomination for  
20 election, or election, to any office or position at any time whether  
21 in the year in which such contributions or expenditures are made or  
22 at any other time.<sup>51</sup>

23 Respondents assert that D’Esposito remained a “candidate under New York law at all  
24 times until his resignation in 2023” and that “[s]ince D’Esposito’s election in 2017, the state  
25 Committee raised and spent thousands of dollars and filed continuous campaign finance reports  
26 with the state all ‘with a view to bringing about his nomination for’ reelection to the [t]own

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<sup>49</sup> 52 U.S.C. § 30125(e)(2) (emphasis added).

<sup>50</sup> Advisory Opinion 2007-26 at 6 (Schock).

<sup>51</sup> N.Y. ELEC. LAW § 14-100(7) (McKinney 2023).

1 [c]ouncil.”<sup>52</sup> If those claims are accurate and the State Committee had been receiving  
2 contributions and making expenditures in 2022 related to D’Esposito’s local election, then it  
3 appears that he could qualify as a candidate under New York State law even though his next  
4 election was more than three years away.<sup>53</sup> The Complaint’s bare allegations to the contrary,  
5 *i.e.*, that D’Esposito could not be considered a candidate because he had recently won re-  
6 election, without additional support indicating that D’Esposito had decided not to run again for  
7 local office, are insufficient to refute the Respondents’ claim that D’Esposito remained a local  
8 candidate.

9 An examination of the expenses at issue also fails to lend credence to Complaint’s  
10 allegations. Regarding the cell phone and volunteer expenses, as the Response notes, because  
11 D’Esposito remained in his position with the town council until 2023, “it stands to reason that  
12 the State Committee would continue to incur and pay its own operating and fundraising expenses  
13 until [his] resignation.”<sup>54</sup> It is entirely possible that the cell phone and volunteer expenses were  
14 state expenses, as they appear consistent with the routine operating expenses of a state office; the  
15 Complaint does not offer anything beyond pointing to their existence in support of the idea that  
16 they could have been federal expenses.

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<sup>52</sup> Resp. at 3.

<sup>53</sup> The Commission recently addressed a similar question on the application of the dual candidate exception but was equally divided over the recommendations. *See* Cert. (Aug. 11, 2023), MUR 8062 (Andrew Garbarino, *et al.*). There, a U.S. House candidate was similarly alleged to have used funds from his state committee to pay expenses for his federal committee. First GCR at 10-14, MUR 8062. The Office of General Counsel recommended that the Commission find a reason to believe Garbarino and the state committee violated the Act’s provisions, based in part on an argument that he was not a dual candidate. *Id.*

The instant matter is factually distinguishable from Garbarino. First, unlike this case, Garbarino did not claim to be a state/local candidate after he declared his federal candidacy. *Id.* at 7. Second, Garbarino was at the end of his term of office, so the state committee expenditures at issue could reasonably be interpreted to have been for the federal office. *Id.* at 10-11. In the present case, D’Esposito had more time to spend state committee funds because his term was not due to end for another three years.

<sup>54</sup> Resp. at 3.

1           Similarly, there is no information that the advertising expenses referenced in the  
2 Complaint were related to the federal campaign. The disbursements at issue appear to have been  
3 paid to local publications and organizations, but there is no available information regarding their  
4 content.<sup>55</sup> The Complaint points to the purposes for those expenses listed on the State  
5 Committee reports (*i.e.*, print ads, journal ads, and online ads) but does not provide any further  
6 details to refute Respondents’ claim that these disbursements were for state campaign  
7 purposes.<sup>56</sup>

8           As to the golf outing, the Complaint alleges that the event was held for the purpose of  
9 influencing the federal election because it was held after D’Esposito had announced his federal  
10 candidacy. However, the Complaint provides no information supporting the allegation that the  
11 event was related to the federal campaign, other than pointing to a third-party Facebook post that  
12 indirectly referenced D’Esposito’s federal candidacy.<sup>57</sup> Respondents assert that there is “no  
13 evidence to suggest . . . [the golf outing] raised [any] federal dollars . . . nor that the content of  
14 the event focused on his federal candidacy,”<sup>58</sup> this Office is not aware of any information  
15 contradicting those statements. Respondents’ claim that the Complaint’s assertion is

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<sup>55</sup> See Compl., Ex. A. (listing advertisements to LI Herald, 5Towns Jewish Times, Oceanside Kiwanis Club, L.I. Federation of Labor, AFL-CIO, AOH Feis & Fest Committee, Jewish Home, The Inn, and The Jewish Home).

<sup>56</sup> The Complaint also notes that D’Esposito used the same vendor (Minuteman Press) for services for the state committee and federal committee at different intervals. Compl. at 3, 5. Specifically, the State Committee paid \$2,119.91 for fundraising purposes on April 30, 2022, while the federal committee paid \$17,348.29 for printing services in August and November 2022. See State Committee Amended 27-Day Report; D’Esposito for New York, Amended 2022 Post-General Report at 132, 147 (July 20, 2023), [https://docquery.fec.gov/pdf/897/202307209583976897.pdf](https://docquery.fec.gov/pdf/897/202307209583976897/202307209583976897.pdf); D’Esposito for New York, Amended 2022 Pre-Primary Report at 42 (Nov. 11, 2022), <https://docquery.fec.gov/pdf/346/202211119546754346/202211119546754346.pdf>. As noted above, D’Esposito remained a viable candidate for his local position on the town council until his resignation and therefore likely had operating expenses, such as fundraising. While the Response fails to specifically address the above-mentioned allegation, this allegation, by itself, does not support a reasonable inference that the fundraising payment by the state committee was in service of D’Esposito’s federal candidacy.

<sup>57</sup> Compl., Ex. D (reflecting post from May 2022 by another local candidate showing a photo from D’Esposito’s golf outing and stating that “we will elect Anthony D’Esposito to represent us in Washington, D.C.”).

<sup>58</sup> Resp. at 3.

1 unsupported is reinforced by the fact that the golf outing was an annual event and appears to  
 2 have been planned well before D’Esposito declared his federal candidacy.<sup>59</sup>

3 The office rental and post office (“P.O.”) box expenses present a more ambiguous  
 4 picture. Regarding the office rental expenses, both the State and Federal Committees appear to  
 5 have used the same office address.<sup>60</sup> As demonstrated in the chart below, the State and Federal  
 6 Committees’ disclosure reports reveal that each committee made office rent payments separately  
 7 and at different intervals:

	Federal Committee <sup>61</sup>	State Committee <sup>62</sup>
Date	Amount	Amount
March '22	\$0	\$0
April '22	\$0	\$0
May '22	\$0	\$0
June '22	\$0	\$0
July '22	\$0	\$0
Aug. '22	\$3,500	\$5,000
Sept. '22	\$0	\$0
Oct. '22	\$0	\$1,250

<sup>59</sup> See Anthony D’Esposito, 2021 Councilman D’Esposito Golf Classic, FACEBOOK <https://facebook.com/events/226763059173377/> (last visited Feb. 8, 2024) (advertising a similar golf event held by D’Esposito in May 2021).

<sup>60</sup> See, e.g., D’Esposito for New York, Amended 2022 Year-End Report (July 20, 2023), <https://docquery.fec.gov/pdf/078/202307209583977078/202307209583977078.pdf> (reflecting address of P.O. box 188, Island Park, NY 11558); Citizens for D’Esposito Itemized Original Disclosure, <https://publicreporting.elections.ny.gov/CandidateCommitteeDisclosure/CandidateCommitteeDisclosure> (search “Citizens for D’Esposito,” then navigate to 2022 32-Day Pre-General Report, 2022 11-Day Pre-General Report, 2022 27-Day Post-General Report, and 2023 January Periodic Itemized Original State/Local Report and search “rent” in each) (last visited Feb. 8, 2024).

<sup>61</sup> See D’Esposito for New York, Amended 2022 October Quarterly Report (Dec. 11, 2022), <https://docquery.fec.gov/pdf/550/202212119557531550/202212119557531550.pdf>; D’Esposito for New York, Amended 2022 Year-End Report (July 20, 2023), <https://docquery.fec.gov/pdf/078/202307209583977078/202307209583977078.pdf>; D’Esposito for New York, Amended 2023 April Quarterly Report (July 20, 2023), <https://docquery.fec.gov/pdf/127/202307209583977127/202307209583977127.pdf>.

<sup>62</sup> See *Candidate/Committee Disclosures Search*, N.Y. STATE BD. OF ELECTIONS, <https://publicreporting.elections.ny.gov/CandidateCommitteeDisclosure/CandidateCommitteeDisclosure> (search “Citizens for D’Esposito,” then navigate to 2022 32-Day Pre-General Report, 2022 11-Day Pre-General Report, 2022 27-Day Post-General Report, and 2023 January Periodic Itemized Original State/Local Report and search “rent” in each) (last visited Feb. 8, 2024).

Nov. '22	\$0	\$1,250
Dec. '22	\$1,500	\$1,250
Jan. '23	\$0	\$0
Feb. '23	\$0	\$0
March '23	\$4,500	\$0
<b>TOTAL</b>	<b>\$9,500</b>	<b>\$8,750</b>

1 Neither the Response nor the Complaint provide any information regarding the committees'  
 2 respective office lease agreements, including the beginning and end dates and the amounts owed.  
 3 It is also not clear why the Federal Committee did not disclose any office rental payments until  
 4 August 2022 when D'Esposito declared his federal candidacy in March of that year, or why the  
 5 State Committee made a payment in August 2022 that was larger than its other payments.  
 6 However, as Respondents note, D'Esposito was still an elected officeholder during the time  
 7 period in question and therefore, the State Committee still likely had operating expenses, such as  
 8 office rent. Without more information, the Complaint's unsubstantiated allegation is insufficient  
 9 to rebut Respondents' assertion that the State Committee's payments for office rent expenses  
 10 were related to D'Esposito's local candidacy.

11 Finally, regarding the P.O. box expenditures, the Complaint notes that the State  
 12 Committee paid for a P.O. box that listed a Washington, D.C. address and asserts that even if  
 13 D'Esposito was running for local office in New York, there is no reasonable explanation for such  
 14 an expenditure unless it was in connection with his federal candidacy.<sup>63</sup> Respondents do not  
 15 deny that the State Committee purchased a P.O. box, but claim that it was not located in  
 16 Washington, D.C.<sup>64</sup> Rather, the Response explains that it was the online receipt provided  
 17 through the U.S. Postal Service website that listed a Washington, D.C. address, and that address

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<sup>63</sup> Compl. at 5.

<sup>64</sup> Resp. at 3.

1 was subsequently listed on the State Committee’s disclosure report.<sup>65</sup> It further notes that  
2 disclosure reports filed with the Commission show “several committees not located in DC  
3 reporting similar addresses for the payment of their own online PO boxes.”<sup>66</sup> Here, the  
4 Complaint’s unsupported allegation is insufficient to refute Respondents’ assertion,, and thus  
5 does not support a reasonable inference that the mailbox was obtained in furtherance of  
6 D’Esposito’s federal candidacy. Moreover, even if the Complaint’s allegation were true, the  
7 amount of the payment for the P.O. box cited in the Complaint was *de minimis* (\$258).<sup>67</sup> Given  
8 the small amount at issue, it appears that any further investigation into this matter would not be a  
9 prudent use of Commission resources. Accordingly, we recommend that the Commission  
10 dismiss this allegation as a matter of prosecutorial discretion.

11 **C. The Commission Should Dismiss the Allegation that Respondents Violated**  
12 **the Soft Money Provisions of 52 U.S.C. § 30125(e)(1)(A)-(B) and 11 C.F.R.**  
13 **§§ 300.61-300.62 in Connection with the State Committee’s Receipt and**  
14 **Spending of Nonfederal Funds**

15 The Complaint alleges that the State Committee accepted at least \$44,410 in  
16 contributions from corporations after D’Esposito declared his federal candidacy, which

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<sup>65</sup> *Id.*

<sup>66</sup> *Id.* The address listed on the State Committee’s disclosure reports is 900 Brentwood Rd, Washington, DC 20066, which is listed as “Washington Main Office” on the USPS website. *Find USPS Locations: Washington Main Office*, USPS, <https://tools.usps.com/find-location.htm?location=1386523> (last visited Feb. 8, 2024). A search of committee reports on the Commission’s website reveals other candidate committees listing a Washington, D.C. address in connection with payments to USPS for P.O. box rentals, and hundreds of other committees list D.C. USPS addresses in connection with postage payments. *See FEC Disbursements: Filtered Results*, FEC.GOV, [https://www.fec.gov/data/disbursements/?data\\_type=processed&recipient\\_name=usps&recipient\\_city=washington&recipient\\_state=DC&disbursement\\_description=PO+Box&spender\\_committee\\_type=S&spender\\_committee\\_type=H](https://www.fec.gov/data/disbursements/?data_type=processed&recipient_name=usps&recipient_city=washington&recipient_state=DC&disbursement_description=PO+Box&spender_committee_type=S&spender_committee_type=H) (last visited Feb. 8, 2024) (reflecting disbursements by House and Senate committees to recipients located in Washington, D.C., with a description of “PO Box”); *FEC Disbursements: Filtered Results*, FEC.GOV, [https://www.fec.gov/data/disbursements/?data\\_type=processed&recipient\\_name=usps&recipient\\_city=Washington&recipient\\_state=DC&spender\\_committee\\_type=S&spender\\_committee\\_type=H](https://www.fec.gov/data/disbursements/?data_type=processed&recipient_name=usps&recipient_city=Washington&recipient_state=DC&spender_committee_type=S&spender_committee_type=H) (last visited Feb. 8, 2024) (reflecting disbursements by House and Senate committees to recipients located in Washington, D.C., with a recipient name including “USPS”).

<sup>67</sup> Compl., Ex. A.



1 constitutes the impermissible receipt of soft money in violation of the Act and Commission  
2 regulations.<sup>68</sup> The Act states that an entity EFMC’d by a federal candidate or federal  
3 officeholder is prohibited from “receiv[ing] . . . funds in connection with any election other than  
4 an election to Federal office” unless the funds are subject to the limitations and source  
5 prohibitions of the Act.<sup>69</sup> As discussed above, the “dual candidate” exception appears to apply  
6 here.<sup>70</sup> As a federal candidate, D’Esposito EFMC’d the State Committee and would therefore be  
7 prohibited from accepting contributions from corporations, a prohibited source under the Act,  
8 and from spending those funds in connection with nonfederal and federal elections. However,  
9 the Act allows a simultaneous federal and state candidate to spend nonfederal funds “solely in  
10 connection with such election for State or local office.”<sup>71</sup> Thus, a simultaneous state candidate  
11 and federal candidate may spend otherwise impermissible funds in connection with his or her  
12 own state election in accordance with this “dual candidate” exception.<sup>72</sup>

13 Here, Respondents maintain that D’Esposito remained a viable local candidate during the  
14 relevant timeframe, even after he declared his federal candidacy.<sup>73</sup> As established above, New

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<sup>68</sup> Compl. at 6; *id.*, Ex. D.

<sup>69</sup> 52 U.S.C. § 30125(e)(1)(B). The Commission has enforced this prohibition against entities EFMC’d by federal candidates, including against a state committee of a federal candidate/officeholder. *See* F&LA at 5, MUR 6985 (Apr. 11, 2017) (Zeldin for Senate, *et al.*) (reason to believe where state campaign committee of federal candidate/officeholder accepted corporate contributions after individual became a federal candidate and was no longer a state candidate); *see also* F&LA at 7, MUR 6957 (Isadore Hall III, *et al.*) (reason to believe where ballot measure committee EFMC’d by federal candidate accepted corporate contributions after individual became a federal candidate). *Cf.* F&LA at 12, MUR 6820 (Carter) (Commission dismissed based on prosecutorial discretion allegation that candidate’s state committee accepted \$3,250 in corporate contributions after he became a federal candidate; the federal candidate was a concurrent state candidate at the time, which would have necessitated investigating whether contributions were in connection with his state election.).

<sup>70</sup> *Supra* Part III. B.

<sup>71</sup> *See* 52 U.S.C. § 30125(e)(2); *see also* 11 CF.R. 300.63.

<sup>72</sup> *See* 52 U.S.C. § 30125(e)(2); *see also* 11 CF.R. 300.63; *see also* Advisory Opinion 2005-02 at 2, 4 (Corzine); Advisory Opinion 2003-32 at 5 (Tenenbaum).

<sup>73</sup> Resp. at 3.

1 York state law and relevant statutory authority support Respondents’ claim. Accordingly,  
2 because D’Esposito was a “dual candidate” and met the requisite criteria, he did not violate the  
3 Act’s soft money prohibitions.<sup>74</sup> Therefore, we recommend that the Commission dismiss the  
4 allegation that D’Esposito and the State Committee violated the provisions of 52 U.S.C.  
5 § 30125(A)-(B) or 11 C.F.R. §§ 300.61-.62.

#### 6 **IV. RECOMMENDATIONS**

- 7  
8 1. Dismiss the allegation that Anthony D’Esposito, D’Esposito for New York and  
9 Claudia Armendinger in her official capacity as treasurer, and Citizens for  
10 D’Esposito violated 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d) in  
11 connection with the Citizens for D’Esposito’s \$1,000 transfer to D’Esposito for  
12 New York;  
13
- 14 2. Dismiss the allegation that Citizens for D’Esposito spent, and D’Esposito for New  
15 York and Claudia Armendinger in her official capacity as treasurer received,  
16 nonfederal funds in connection with an election for federal office, in violation of  
17 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. §§ 110.3(d) and 300.61;  
18
- 19 3. Dismiss the allegation that Anthony D’Esposito and Citizens for D’Esposito  
20 violated the soft money provisions of 52 U.S.C. § 30125(e)(1)(A)-(B) and 11  
21 C.F.R. §§ 300.61-.62 in connection with the State Committee’s receipt and  
22 spending of nonfederal funds;  
23
- 24 4. Approve the attached Factual and Legal Analysis; and

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<sup>74</sup> See, e.g., F&LA at 12, MUR 6820 (Buddy Carter for Congress).

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- 5. Close the file effective 30 days from the date of certification of this vote (or on the next business day after the 30th day, if the 30th day falls on a weekend or holiday).

Lisa J. Stevenson  
Acting General Counsel

Charles Kitcher  
Associate General Counsel for  
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04/22/24  
Date

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