



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

By Email Only

Derek.Ross@ElectionLawLLC.com

Derek Ross
Elections, LLC
1050 Connecticut Avenue, NW, STE 500
Washington, DC 20036

June 17, 2024

RE: MUR 8128
Anthony D'Esposito, *et al.*

Dear Mr. Ross:

On April 20, 2023, the Federal Election Commission notified your clients, Anthony D'Esposito, D'Esposito for New York and Claudia Armendinger in her official capacity as treasurer ("D'Esposito for New York"), and Citizens for D'Esposito, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was included with the notification at that time.

Upon further review of the allegations contained in the complaint and information supplied by you on your clients' behalf, the Commission, on May 14, 2024, voted to dismiss the allegations that: (1) Anthony D'Esposito, D'Esposito for New York, and Citizens for D'Esposito violated 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d) in connection with the Citizens for D'Esposito's \$1,000 transfer to D'Esposito for New York; (2) Citizens for D'Esposito spent, and D'Esposito for New York received, nonfederal funds in connection with an election for federal office, in violation of 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. §§ 110.3(d) and 300.61; and (3) Anthony D'Esposito and Citizens for D'Esposito violated the soft money provisions of 52 U.S.C. § 30125(e)(1)(A)-(B) and 11 C.F.R. §§ 300.61-.62 in connection with the State Committee's receipt and spending of nonfederal funds. Accordingly, the Commission voted to close the file, effective June 17, 2024.

Documents related to the case will be placed on the public record today. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). Any applicable Factual and Legal Analysis or Statements of Reasons available at the time of this letter's transmittal are enclosed.

If you have any questions, please contact Isaac Campbell, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Ana J. Peña-Wallace

Ana J. Peña-Wallace
Assistant General Counsel

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Anthony D’Esposito MUR 8128
D’Esposito for New York and Claudia Armendinger
in her official capacity as treasurer
Citizens for D’Esposito (terminated)

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

The Respondents submitted a Joint Response that admits that the State Committee transmitted \$1,000 to the Federal Committee but claims that such a transmission was not a

¹ Compl. at 1, 3 (Apr. 18, 2023).

² *Id.* at 1, 3-4, Exs. A-C.

³ *Id.* at 1-2, 6-7, Ex. D.

1 prohibited transfer, but rather a contribution.⁴ Respondents assert that contributions from
2 nonfederal committees to federal committees are permitted so long as the nonfederal committee
3 has sufficient permissible funds to make the contribution, and that “the State Committee had
4 sufficient permissible funds at the time the contribution was made.”⁵ As to the allegations that
5 the State Committee paid for D’Esposito’s federal campaign expenses, the Response asserts that
6 D’Esposito remained a viable candidate for re-election to his town council position until his
7 resignation, and thus the alleged in-kind contributions were legitimate expenses for a nonfederal
8 candidate.⁶ Finally, the Response asserts that, because D’Esposito was a viable candidate for
9 both federal and local offices, he was eligible for the “dual-candidate exception,” in which the
10 soft money prohibition did not apply “to raising and spending relating [to] a federal candidate’s
11 own simultaneous state or local candidacy.”⁷

12 For the reasons set forth below, the Commission dismisses as a matter of prosecutorial
13 discretion the allegation that Respondents violated 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R.
14 § 110.3(d) in connection with the State Committee’s \$1,000 contribution to the Federal
15 Committee.⁸ Given the flexibility in New York State law regarding the definition of a candidate
16 and D’Esposito’s viability as a dual candidate during the relevant timeframe, coupled with the
17 lack of sufficient information provided by the Complaint, the Commission also dismisses the
18 allegation that D’Esposito and the State Committee violated 52 U.S.C. § 30125(e)(1)(A) and

⁴ Resp. at 2 (June 6, 2023).

⁵ *Id.*

⁶ *Id.* at 2-3.

⁷ *Id.* at 4; *see also* 11 C.F.R. § 300.63.

⁸ *See Heckler v. Chaney*, 470 U.S. 821 (1985).

1 11 C.F.R. §§ 110.3(d) and 300.61 by receiving and spending nonfederal funds in connection with
2 an election to nonfederal office. Finally, for the same reasons, the Commission dismisses the
3 allegation that the Federal Committee violated 52 U.S.C. § 30125(e)(1)(A)-(B) and 11 C.F.R.
4 §§ 300.61, 300.62 by receiving and spending corporate contributions from the State Committee
5 in connection with an election to federal office.

6 **II. FACTUAL BACKGROUND**

7 Anthony D’Esposito is the U.S. Representative for New York’s Fourth Congressional
8 District, having won election to federal office in 2022.⁹ He filed his initial Statement of
9 Candidacy on March 16, 2022.¹⁰ D’Esposito for New York is his principal campaign committee,
10 with Claudia Armendinger serving as treasurer.¹¹ Prior to serving in Congress, D’Esposito was a
11 member of the Hempstead, New York town council from 2016 to 2022,¹² winning re-election in
12 2021.¹³ His now-terminated state campaign committee was Citizens for D’Esposito.¹⁴

13 The Complaint alleges that D’Esposito and the Federal Committee violated 11 C.F.R.
14 § 110.3(d) by accepting \$1,000 from the State Committee.¹⁵ The Complaint also alleges that the

⁹ 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>.

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

¹¹ *Id.*

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

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

¹⁴ *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).

¹⁵ 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

1 Respondents violated 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. §§ 110.3(d) and 300.61 because
2 it contends that the State Committee paid for the federal campaign’s expenses, and specifically
3 cites to the State Committee’s payment of \$23,247.90 for print and online advertising, rent, cell
4 phones, volunteer expenses and mail services,¹⁶ as well as a payment of \$2,199.91 to a printing
5 and fundraising vendor.¹⁷ The Complaint further alleges that the State Committee spent over
6 \$97,850.63 in connection with a golf fundraiser, which the Complaint contends was to benefit
7 D’Esposito’s federal campaign.¹⁸ In support of this allegation, the Complaint points to the fact
8 that D’Esposito had won re-election to his position on the Hempstead town council in 2021, and
9 because the next election was over three years away, D’Esposito could not credibly be
10 considered a viable local candidate.¹⁹ Therefore, the Complaint concludes that the
11 aforementioned expenses must have been related to his federal campaign.²⁰ Finally, the
12 Complaint alleges that the State Committee’s receipt of \$123,218.44 in corporate contributions
13 after D’Esposito became a federal candidate must have been related to his federal campaign, and
14 thus violated 52 U.S.C. § 30125(e)(1)(A)-(B) and 11 C.F.R. §§ 300.61, 300.62.²¹

15 The Response, which was submitted on behalf of all the Respondents, admits that the
16 State Committee transmitted \$1,000 to the Federal Committee but contends that the transmission

State/Local Report (May 11, 2022)) (last visited Feb. 8, 2024) [hereinafter “State Committee Amended 27-Day Report”].

¹⁶ Compl. at 3-4, 4-6; *id.*, Ex. A-B.

¹⁷ *See* State Committee Amended 27-Day Report.

¹⁸ Compl. at 3-4, 4-6; *id.*, Ex. C.

¹⁹ Compl. at 2, 5.

²⁰ *Id.*

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

1 was a “contribution” and not a “transfer.”²² The Response states that “contributions from
2 nonfederal committees to federal committees are permitted so long as the nonfederal committee
3 has sufficient permissible funds on hand to make the contribution” and that State Committee
4 filings show that it had sufficient permissible funds to make the contribution at issue here.²³ As
5 to the allegation that the State Committee paid for D’Esposito’s federal campaign expenses, the
6 Response asserts that, at all times relevant to the Complaint, D’Esposito was a viable local
7 candidate under New York state law.²⁴ Moreover, the Response asserts that the aforementioned
8 expenses were local election-related and that the Complaint “failed to [demonstrate] that they
9 were used for federal activity.”²⁵ Finally, the Response asserts that the State Committee’s receipt
10 of contributions from corporate donors was permissible because D’Esposito was a dual candidate
11 as defined under the Act.²⁶

12 **III. LEGAL ANALYSIS**

13 The Act and Commission regulations prohibit candidates, individuals holding Federal
14 office, agents of a candidate or an individual holding Federal office, or an entity directly or
15 indirectly established, financed, maintained, or controlled (“EFMC”) by or acting on behalf of
16 one or more candidates or individuals holding Federal office from “solicit[ing], receiv[ing],
17 direct[ing], transfer[ing], or spend[ing] funds in connection with an election for Federal office,
18 including funds for any Federal election activity, unless the funds are subject to the limitations,

²² Resp. at 2.

²³ *Id.*

²⁴ *Id.* at 2-3.

²⁵ *Id.*

²⁶ *Id.* at 4.

1 prohibitions, and reporting requirements of this Act”²⁷ and from “solicit[ing], receiv[ing],
2 direct[ing], transfer[ing], or spend[ing] funds in connection with” a nonfederal election unless
3 the funds are subject to the Act’s amount limitations and source prohibitions.²⁸

4 The Commission has determined that a state campaign committee of a federal candidate
5 is, as a matter of law, EFMC’d by the federal candidate and is acting on the candidate’s behalf.²⁹
6 However, a federal candidate is exempted from these prohibitions where “the solicitation, receipt
7 or spending of funds [is] by an individual . . . who is or was also a candidate for a State or local
8 office [and the solicitation, receipt, or spending of funds is] solely in connection with such an
9 election for State or local office [and] the solicitation, receipt, or spending of funds is permitted
10 under State law and refers only to such State or local candidate”³⁰

11 Transfers of funds or assets from a candidate’s campaign account for a nonfederal
12 election to his or her principal campaign committee for a federal election are also prohibited.³¹
13 Accordingly, a candidate’s state committee’s funds must be kept separate from his or her federal
14 committee’s funds.³² The prohibition on transferring funds or assets applies broadly and
15 includes payment by the state committee for goods or services to the federal committee.³³ The

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

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

²⁹ 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)).

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

³¹ 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). .

³² 11 C.F.R. § 110.3(d).

³³ 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

1 Commission, however, permits the transfer of a nonfederal committee’s assets to the campaign
2 committee of a candidate for federal office if such transfer is conducted under current market
3 practices and at the usual and normal charges.³⁴ The provisions at 52 U.S.C. § 30125(e) and
4 11 C.F.R. § 110.3(d) are designed to prevent the use of funds that are outside the limitations and
5 prohibitions of the Act in federal elections, and to ensure that all funds used in federal elections
6 are reported.³⁵

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

11
12 In the instant matter, the Response concedes and the committees’ disclosure reports
13 confirm that the Federal Committee accepted \$1,000 from the State Committee.³⁶ Respondents
14 acknowledge that “the Act and Commission regulations prohibit the transfer of funds or assets
15 from a nonfederal campaign committee to the federal campaign committee of the same
16 candidate.”³⁷ Nevertheless, Respondents contend that the deposit to the federal committee was

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).

³⁴ 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).

³⁵ F&LA at 4, MUR 7109 (Portantino).

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

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

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Factual and Legal Analysis

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1 not a *transfer* of funds, and was instead a *contribution* by the state committee and thus
2 permissible.³⁸

3 Respondents’ argument is unavailing for several reasons. First, Respondents seek to
4 transform a prohibited action into a permitted one by simply relabeling the action, without
5 providing any authority in support of such a recharacterization. Rather, the Commission has
6 previously found that such a provision of funds from a federal candidate’s state committee to
7 their federal committee constitutes a transfer.³⁹

8 Second, 11 C.F.R. § 110.3(d) was intended to address the exact action at issue here.⁴⁰
9 According to the Explanation and Justification regarding “Transfer of Funds From State to
10 Federal Campaigns,” this regulation was intended to prohibit “transfers of cash or other assets
11 from state campaign committees to federal campaign committees.”⁴¹ This regulatory scheme
12 was adopted because “[m]any states allow individuals to make contributions to state candidates
13 that would exceed FECA limits....[and] allow corporations and labor organizations to make

³⁸ Resp. at 2.

³⁹ See, e.g., 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 11 & Cert. at ¶ 3, 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).

⁴⁰ 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.

⁴¹ 58 Fed. Reg. 3474, 3475 (Jan. 8, 1993).

1 contributions to state candidates.”⁴² In adopting the regulation, the Commission was “also
 2 concerned about the indirect use of impermissible funds in federal elections . . . consequently,
 3 the Commission has decided to promulgate new rules that would more effectively prevent the
 4 indirect use of impermissible funds in federal elections.”⁴³

5 Accordingly, there is sufficient information to find reason to believe that the Respondents
 6 violated 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d) in connection with the State
 7 Committee’s direct transfer of funds to the Federal Committee. However, in light of the low
 8 amount of the transfer, we instead dismiss the allegation as an exercise of prosecutorial
 9 discretion.⁴⁴

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

15
 16 The Complaint alleges that D’Esposito’s federal campaign received impermissible
 17 contributions from his State Committee through the State Committee’s payments for alleged
 18 federal campaign expenditures. Specifically, the Complaint refers to D’Esposito’s State
 19 Committee expenditures for, *inter alia*, “print and online advertising, rent, cell phones, volunteer
 20 expenses and mail services.”⁴⁵ The Complaint alleges that these expenditures must have been
 21 related to D’Esposito’s federal campaign because he had recently been elected to his position on

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *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).

⁴⁵ Compl. at 3-5.

1 the local town council, and the expenditures occurred at a time where the next town council
2 election was over three years away.⁴⁶ The Complaint concludes that, during the relevant
3 timeframe, D’Esposito’s federal campaign was “his only active campaign.”⁴⁷

4 If the State Committee’s expenditures were made in connection with D’Esposito’s federal
5 candidacy, the State Committee would have made, and Federal Committee would have received,
6 a prohibited in-kind contribution.⁴⁸ However, 52 U.S.C. § 30125(e)(2) provides an exemption
7 “to the solicitation, receipt, or spending of funds by an individual . . . *who is or was also a*
8 *candidate* for State or local office solely in connection with such election for State or local office
9 if the solicitation, receipt, or spending of funds is permitted under State law and refers only to
10 such State or local candidate”⁴⁹ The Commission has explained that the purpose of the
11 “dual candidate” exception is “to provide an equitable basis for a Federal officeholder or
12 candidate to conduct his or her campaign for non-Federal office so that he or she is not
13 financially disadvantaged when competing with a non-Federal opponent who may raise and

⁴⁶ *Id.* at 2, 5.

⁴⁷ *Id.* at 3.

⁴⁸ 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.”).

⁴⁹ 52 U.S.C. § 30125(e)(2) (emphasis added).

1 spend funds without the same restrictions that section [30125(e)] imposes on Federal candidates
2 and officeholders.”⁵⁰ Here, the applicable New York law defines a “candidate” as:

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

16 Respondents assert that D’Esposito remained a “candidate under New York law at all
17 times until his resignation in 2023” and that “[s]ince D’Esposito’s election in 2017, the state
18 Committee raised and spent thousands of dollars and filed continuous campaign finance reports
19 with the state all ‘with a view to bringing about his nomination for’ reelection to the [t]own
20 [c]ouncil.”⁵² If those claims are accurate and the State Committee had been receiving
21 contributions and making expenditures in 2022 related to D’Esposito’s local election, then it
22 appears that he could qualify as a candidate under New York State law even though his next
23 election was more than three years away. The Complaint’s bare allegations to the contrary, *i.e.*,
24 that D’Esposito could not be considered a candidate because he had recently won re-election,
25 without additional support indicating that D’Esposito had decided not to run again for local

⁵⁰ Advisory Opinion 2007-26 at 6 (Schock).

⁵¹ N.Y. ELEC. LAW § 14-100(7) (McKinney 2023).

⁵² Resp. at 3.

1 office, are insufficient to refute the Respondents' claim that D'Esposito remained a local
2 candidate.

3 An examination of the expenses at issue also fails to lend credence to Complaint's
4 allegations. Regarding the cell phone and volunteer expenses, as the Response notes, because
5 D'Esposito remained in his position with the town council until 2023, "it stands to reason that
6 the State Committee would continue to incur and pay its own operating and fundraising expenses
7 until [his] resignation."⁵³ It is entirely possible that the cell phone and volunteer expenses were
8 state expenses, as they appear consistent with the routine operating expenses of a state office; the
9 Complaint does not offer anything beyond pointing to their existence in support of the idea that
10 they could have been federal expenses.

11 Similarly, there is no information that the advertising expenses referenced in the
12 Complaint were related to the federal campaign. The disbursements at issue appear to have been
13 paid to local publications and organizations, but there is no available information regarding their
14 content.⁵⁴ The Complaint points to the purposes for those expenses listed on the State
15 Committee reports (*i.e.*, print ads, journal ads, and online ads) but does not provide any further
16 details to refute Respondents' claim that these disbursements were for state campaign purposes.⁵⁵

⁵³ Resp. at 3.

⁵⁴ 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).

⁵⁵ 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/897/202307209583976897/202307209583976897.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-

1 As to the golf outing, the Complaint alleges that the event was held for the purpose of
2 influencing the federal election because it was held after D’Esposito had announced his federal
3 candidacy. However, the Complaint provides no information supporting the allegation that the
4 event was related to the federal campaign, other than pointing to a third-party Facebook post that
5 indirectly referenced D’Esposito’s federal candidacy.⁵⁶ Respondents assert that there is “no
6 evidence to suggest . . . [the golf outing] raised [any] federal dollars . . . nor that the content of
7 the event focused on his federal candidacy;”⁵⁷ the Commission is not aware of any information
8 contradicting those statements. Respondents’ claim that the Complaint’s assertion is
9 unsupported is reinforced by the fact that the golf outing was an annual event and appears to
10 have been planned well before D’Esposito declared his federal candidacy.⁵⁸

11 Regarding the office rental expenses, both the State and Federal Committees appear to
12 have used the same office address.⁵⁹ As demonstrated in the chart below, the State and Federal
13 Committees’ disclosure reports reveal that each committee made office rent payments separately
14 and at different intervals:

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.

⁵⁶ 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.”).

⁵⁷ Resp. at 3.

⁵⁸ 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).

⁵⁹ 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) .

	Federal Committee ⁶⁰	State Committee ⁶¹
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
Nov. '22	\$0	\$1,250
Dec. '22	\$1,500	\$1,250
Jan. '23	\$0	\$0
Feb. '23	\$0	\$0
March '23	\$4,500	\$0
TOTAL	\$9,500	\$8,750

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 However, as Respondents note, D’Esposito was still an elected officeholder during the time
 4 period in question and therefore, the State Committee still likely had operating expenses, such as
 5 office rent. Without more information, the Complaint’s unsubstantiated allegation is insufficient
 6 to rebut Respondents’ assertion that the State Committee’s payments for office rent expenses
 7 were related to D’Esposito’s local candidacy.

⁶⁰ 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>.

⁶¹ 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).

1 Finally, regarding the P.O. box expenditures, the Complaint notes that the State
2 Committee paid for a P.O. box that listed a Washington, D.C. address and asserts that even if
3 D’Esposito was running for local office in New York, there is no reasonable explanation for such
4 an expenditure unless it was in connection with his federal candidacy.⁶² Respondents do not
5 deny that the State Committee purchased a P.O. box, but claim that it was not located in
6 Washington, D.C.⁶³ Rather, the Response explains that it was the online receipt provided
7 through the U.S. Postal Service website that listed a Washington, D.C. address, and that address
8 was subsequently listed on the State Committee’s disclosure report.⁶⁴ It further notes that
9 disclosure reports filed with the Commission show “several committees not located in DC
10 reporting similar addresses for the payment of their own online PO boxes.”⁶⁵ Here, the
11 Complaint’s unsupported allegation is insufficient to refute Respondents’ assertion, and thus

⁶² Compl. at 5.

⁶³ Resp. at 3.

⁶⁴ *Id.*

⁶⁵ *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 (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 (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”).

1 does not support a reasonable inference that the mailbox was obtained in furtherance of
2 D’Esposito’s federal candidacy. Accordingly, the Commission dismisses this allegation.⁶⁶

3 **C. The Commission Dismisses the Allegation that Respondents Violated the Soft**
4 **Money Provisions of 52 U.S.C. § 30125(e)(1)(A)-(B) and 11 C.F.R. §§ 300.61-**
5 **300.62 in Connection with the State Committee’s Receipt and Spending of**
6 **Nonfederal Funds**

7 The Complaint alleges that the State Committee accepted at least \$44,410 in
8 contributions from corporations after D’Esposito declared his federal candidacy, which
9 constitutes the impermissible receipt of soft money in violation of the Act and Commission
10 regulations.⁶⁷ The Act states that an entity EFMC’d by a federal candidate or federal
11 officeholder is prohibited from “receiv[ing] . . . funds in connection with any election other than
12 an election to Federal office” unless the funds are subject to the limitations and source
13 prohibitions of the Act.⁶⁸ As discussed above, the “dual candidate” exception applies here.⁶⁹ As
14 a federal candidate, D’Esposito EFMC’d the State Committee, and would therefore be prohibited
15 from accepting contributions from corporations, a prohibited source under the Act, and from
16 spending those funds in connection with nonfederal and federal elections. However, the Act
17 allows a simultaneous federal and state candidate to spend nonfederal funds “solely in

⁶⁶ Moreover, even if the Complaint’s allegation were true, the amount of the payment for the P.O. box cited in the Complaint was *de minimis* (\$258). Compl., Ex. A.

⁶⁷ Compl. at 6; *id.*, Ex. D.

⁶⁸ 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).

⁶⁹ *Supra* Part III. B.

1 connection with such election for State or local office.”⁷⁰ Thus, a simultaneous state candidate
2 and federal candidate may spend otherwise impermissible funds in connection with his or her
3 own state election in accordance with this “dual candidate” exception.⁷¹

4 Here, Respondents maintain that D’Esposito remained a viable local candidate during the
5 relevant timeframe, even after he declared his federal candidacy.⁷² As established above, New
6 York state law and relevant statutory authority support Respondents’ claim. Accordingly,
7 because D’Esposito was a “dual candidate” and met the requisite criteria, he did not violate the
8 Act’s soft money prohibitions.⁷³ Therefore, the Commission dismisses the allegation that
9 D’Esposito and the State Committee violated the provisions of 52 U.S.C. § 30125(e)(1)(A)-(B)
10 or 11 C.F.R. §§ 300.61-300.62.

⁷⁰ See 52 U.S.C. § 30125(e)(2); *see also* 11 C.F.R. 300.63.

⁷¹ See 52 U.S.C. § 30125(e)(2); *see also* 11 C.F.R. 300.63; *see also* Advisory Opinion 2005-02 at 2, 4 (Corzine); Advisory Opinion 2003-32 at 5 (Tenenbaum).

⁷² Resp. at 3.

⁷³ See, e.g., F&LA at 12, MUR 6820 (Buddy Carter for Congress).