

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

AR 23-04R

DATE REFERRED: May 4, 2023

DATE OF NOTIFICATION: October 31, 2023¹

LAST RESPONSE RECEIVED: May 28, 2024

DATE ACTIVATED: September 27, 2023

██████████
EXPIRATION OF SOL:

February 24, 2027 (earliest)

October 17, 2027 (latest)

ELECTION CYCLE: 2022

RR 24L-02

DATE REFERRED: January 4, 2024

DATE OF NOTIFICATION: January 9, 2024

LAST RESPONSE RECEIVED: March 13, 2024

DATE ACTIVATED: February 29, 2024

██████████
EXPIRATION OF SOL:

December 8, 2027 (earliest)

July 20, 2028 (latest)

ELECTION CYCLE: 2022

SOURCE:

Internally Generated

RESPONDENT:D'Esposito for New York and Claudia Armendinger
in her official capacity as treasurer**RELEVANT STATUTES:****AND REGULATIONS:**

52 U.S.C. § 30104(b)(8)

52 U.S.C. § 30116(f)

¹ On May 12, 2023, the Office of General Counsel (“OGC”) initially notified D’Esposito for New York (the “Committee”) of potential violations but the letter did not specify the contributions at issue. Compl. Notif. Letter (May 12, 2023). In its Response, dated August 10, 2023, the Committee stated that the Commission had not “provid[ed] any information about the identified contributions” and asked that the matter be dismissed. The Response contained two arguments: (1) that the Commission failed to provide the Committee with notice of the specific contributions at issue; and (2) that a change in the New York Primary date caused confusion as to the acceptance of contributions. The notification letter also stated that the Commission had conducted an audit pursuant to 52 U.S.C. § 30111(b) which did not occur. By letter dated October 19, 2023, OGC rescinded the notification. On October 31, 2023, OGC sent a replacement notification letter with an attachment listing the specific contributions at issue, generated by the Reports Analysis Division (“RAD”), totaling \$105,750, and removed the reference to the audit which did not occur. Compl. Replacement Notif. Letter (Oct. 31, 2023). And the change in the primary election date is addressed below at page 5, note 10. The Committee’s response to the original notification letter has been rescinded along with the original notification.

1 11 C.F.R. § 103.3(b)
 2 11 C.F.R. § 104.3(d)
 3 11 C.F.R. § 110.9
 4

5 **INTERNAL REPORTS CHECKED:** Disclosure Reports
 6

7 **FEDERAL AGENCIES CHECKED:** None
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9 **I. INTRODUCTION**

10 Regarding Audit Referral 23-04R, on March 27, 2023, the Reports Analysis Division
 11 (“RAD”) referred D’Esposito for New York and Claudia Armendinger in her official capacity as
 12 treasurer (the “Committee”) to the Audit Division, but on May 4, 2023, the Audit Division
 13 transferred the Audit Referral to the Office of the General Counsel (“OGC”) without conducting
 14 the Audit.² The Referral concerns disclosure reports filed by the Committee during the 2022
 15 election cycle. Among other violations, the Referral is based on the Committee’s acceptance of
 16 excessive contributions from individuals and an authorized committee of another candidate, and
 17 apparently prohibited contributions from unregistered organizations, totaling \$105,750, in
 18 violation of the Federal Election Campaign Act of 1971, as amended (the “Act”). According to
 19 its Response and amended disclosure reports, the Committee timely reattributed or redesignated
 20 \$93,800 of the excessive contributions from the Primary Election to the General Election, made
 21 amendments to the 2022 October Quarterly Report removing \$8,700 in contributions initially
 22 disclosed as excessive but never received by the Committee, and verified the permissibility of

² RAD initially referred the Committee to the Audit Division, and the Commission subsequently authorized the Audit Division to transfer the matter to OGC for possible enforcement action. Memorandum to the Commission, 2021-2022 Audit Referrals – Authorized Committees at 3 (Apr. 20, 2023) (recommending that the Commission authorize the Audit Division to transfer D’Esposito for New York to OGC for further processing); Certification, 2021-2022 Audit Referrals – Authorized Committees (May 5, 2023) (approving the recommendation).

1 \$2,150 in apparent prohibited funds from unregistered organizations.³ At this time, \$1,100 in
2 excessive contributions remain. As discussed below, given the minimal amount in violation, we
3 recommend that the Commission exercise its prosecutorial discretion and decline to open a
4 Matter Under Review (“MUR”).

5 Regarding RAD Referral 24L-02, on January 4, 2024, RAD referred the Committee to
6 OGC concerning increased debts in the amount of \$150,279.30 that the Committee disclosed in
7 an Amended 2022 30-Day Post-General Report.⁴ The Committee filed a Response, stating that
8 its “employees were in possession of these debts and did not share them with the treasurer until a
9 later date, at which time it felt important to accurately reflect those debts owed.”⁵ We
10 recommend that the Commission open a MUR and find reason to believe that the Committee
11 violated 52 U.S.C. § 30104(b)(8) and 11 C.F.R. § 104.3(d) by failing to disclose debts; and enter
12 into pre-probable cause conciliation with the Committee [REDACTED]

13 [REDACTED]

14 **II. FACTUAL AND LEGAL ANALYSIS**

15 D'Esposito for New York is the principal campaign committee of Anthony P.
16 D'Esposito, a candidate in the 2022 election for New York's 4th Congressional District.⁶

³ Resp. at 1-8 (May 28, 2024); *see also* D'Esposito for New York, Amended 2022 October Quarterly Report (showing absence of contributions from Michael Hayde, Laura Khouri, and Cherna Moskowitz) (May 24, 2024), <https://docquery.fec.gov/pdf/871/202405249648780871/202405249648780871.pdf>.

⁴ RR 24L-02 Referral (D'Esposito for New York) (Jan. 4, 2024).

⁵ RR 24L-02 Resp. at 1 (Mar. 11, 2024).

⁶ D'Esposito for New York Statement of Organization at 1 (Mar. 16, 2022); Anthony P. D'Esposito, Amended Statement of Candidacy at 1 (Apr. 13, 2024). D'Esposito won the 2022 General Election. New York State Board of Elections, (last visited June 27, 2024), [https://results.elections.ny.gov/search?gf=e&e\[0\]=1&p=0&ps=24&fp=0&fps=25&t=cards&it=contests&ic=marginTop&vs=false&bq=true&bqtxt=&c=true&sp=false](https://results.elections.ny.gov/search?gf=e&e[0]=1&p=0&ps=24&fp=0&fps=25&t=cards&it=contests&ic=marginTop&vs=false&bq=true&bqtxt=&c=true&sp=false).

1 Claudia Armendinger was the treasurer at the time of the activity in AR 23-04R and RR 24L-02,
2 and she remains the treasurer of the Committee.⁷

3 **A. The Commission Should Decline to Open a Matter Under Review in**
4 **AR 23-04R as to the Allegations that the Committee Knowingly Accepted**
5 **Excessive Contributions and Contributions from Unregistered Organizations**
6 **Without Ascertaining that the Underlying Funds Complied with the**
7 **Limitations and Prohibitions of the Act**
8

9 According to the Referral in AR 23-04R, in the 2022 election cycle, the Committee
10 received excessive and apparent prohibited contributions from 44 individuals, one authorized
11 committee, and four unregistered organizations totaling \$105,750.⁸ These excessive and
12 apparent prohibited contributions are disclosed in the Committee's 2022 July Quarterly Report,
13 12-Day Pre-Primary Report, and October Quarterly Report. After receiving notification of the
14 Referral, on May 24, 2024, the Committee filed Amended 2022 July Quarterly, 12-Day Pre-
15 Primary, and October Quarterly Reports reflecting timely redesignations of \$93,800 in
16 previously excessive contributions, removing \$8,700 in contributions initially disclosed as
17 excessive but never received by the Committee, verifying the permissibility of \$2,150 in funds
18 used for contributions from unregistered organizations by adding language in the memo item line
19 stating "CONTRIBUTION FROM VERIFIED SOURCE," and \$1,100 in contributions remain
20 excessive and uncorrected.⁹ The Committee filed a Response to the Referral on May 28, 2024,

⁷ See D'Esposito for New York Statement of Organization at 1 (Mar. 16, 2022); D'Esposito for New York Amended Statement of Organization at 1 (Apr. 13, 2024).

⁸ Compl. Replacement Notif. Letter Attach.

⁹ D'Esposito for New York, Amended 2022 July Quarterly Report (May 24, 2024), <https://docquery.fec.gov/pdf/581/202405249648780581/202405249648780581.pdf>; D'Esposito for New York, Amended 2022 12-Day Pre-Primary. (May24, 2024) <https://docquery.fec.gov/pdf/826/202405249648780826/202405249648780826.pdf> D'Esposito for New York, Amended 2022 October Quarterly Report (May 24, 2024), <https://docquery.fec.gov/pdf/871/202405249648780871/202405249648780871.pdf>.

1 explaining its May 24 amendments and that in view of them no action should be taken against
 2 the Committee.¹⁰

3 1. The Committee Disclosed Timely Redesignations of Most Excessive
 4 Contributions from Individuals and the Authorized Committee of Another
 5 Candidate
 6

7 The Act and Commission regulations limit the amount an individual may contribute to a
 8 candidate's authorized committees, which during the 2022 election cycle was \$2,900 per
 9 election,¹¹ and prohibit any candidate or committee from knowingly accepting an excessive
 10 contribution.¹² Contributions which on their face exceed the contribution limits, and
 11 contributions which do not appear on their face to exceed the contribution limits but exceed
 12 contribution limits when aggregated with other contributions, and which cannot be accepted
 13 under the net debts outstanding provisions, may be returned to the contributor or deposited.¹³ If
 14 deposited, excessive contributions must be: (1) redesignated in accordance with 11 C.F.R.
 15 §§ 110.1(b)(5) or 110.2(b)(5); (2) reattributed in accordance with 11 C.F.R. § 110.1(k)(3); or

¹⁰ The Response cites the change in the 2022 Primary Election date, specifically, what the Response terms as the Commission's lack of specific guidance in Advisory Opinion 2022-08 (National Republican Congressional Committee), as a unique challenge for "preparing and filing their periodic reports," Resp. at 2-3, although the contributions at issue were not ultimately affected by the change in the Primary Election date. *See* Referral at 5 (explaining that by court order, on May 10, 2022, New York changed the primary election date for House candidates from June 28, 2022, to August 23, 2022; in response, the Commission created a second available contribution limit for contributions made in connection with the August primary election applicable to contributions made after May 20, 2022, the date of the court's final order setting the district lines for the August 23 election).

¹¹ 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b); Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Disclosure Threshold, 86 Fed. Reg. 7867, 7868 (Feb. 2, 2021). The Act permits an authorized committee to contribute up to \$2,000 to the authorized committee of another candidate. 52 U.S.C. § 30102(e)(3)(B); 11 C.F.R. § 102.13(c)(2).

¹² 52 U.S.C. § 30116(f); 11 C.F.R. § 110.9 ("No candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of 11 C.F.R. part 110.").

¹³ 11 C.F.R. § 103.3(b)(3).

1 (3) refunded within 60 days of the date that the committee has actual notice of the need to
2 refund, redesignate or reattribute the contributions.¹⁴

3 On July 15, 2022, the Committee filed its 2022 July Quarterly Report, which disclosed
4 \$84,200 in excessive contributions from 37 individuals.¹⁵ On August 11, 2022, the Committee
5 filed its 2022 12-Day Pre-Primary Report, which disclosed the receipt of excessive contributions
6 from four individuals and one authorized committee of another candidate totaling \$9,100.¹⁶ On
7 October 15, 2022, the Committee filed its 2022 October Quarterly Report, which disclosed \$500
8 in excessive contributions from one individual and \$8,700 in the form of contributions from
9 three individuals designated for the 2022 Primary Election but received after the Primary
10 Election.¹⁷

11 The Committee, in its Response, identified a number of redesignations reflected in
12 May 2024 amendments to the 2022 July Quarterly, 12-Day Pre-Primary, and October Quarterly
13 Reports that reflected timely reattributions and redesignations of \$93,800 in previously excessive
14 contributions, and removing \$8,700 in contributions never received by the Committee.¹⁸ Each
15 redesignation, though disclosed in amended reports dated May 24, 2024, is dated as occurring

¹⁴ *Id.*

¹⁵ D'Esposito for New York, Amended 2022 July Quarterly Report (Nov. 11, 2022), <https://docquery.fec.gov/pdf/116/202211119546754116/202211119546754116.pdf>.

¹⁶ D'Esposito for New York, Amended 2022 Pre-Primary Report (Nov. 11, 2022), <https://docquery.fec.gov/pdf/346/202211119546754346/202211119546754346.pdf>.

¹⁷ D'Esposito for New York, 2022 October Quarterly Report at 88, 122, 123, 150 (Oct. 15, 2022), <https://docquery.fec.gov/pdf/609/202210159532811609/202210159532811609.pdf>.

¹⁸ D'Esposito for New York, Amended 2022 July Quarterly Report at 140 (Rachel Barrett), 173 (John Bach), 203 (Matthew Bruderman), *et al.* (May 24, 2024), <https://docquery.fec.gov/pdf/581/202405249648780581/202405249648780581.pdf>; D'Esposito for New York, Amended 2022 12-Day Pre-Primary Report at 21 (Madison Gorton), 10 (Michael Gorton), 24-25 (Jennifer Renzo), *et al.* (May 24, 2024) [https://docquery.fec.gov/pdf/826/202405249648780826.pdf](https://docquery.fec.gov/pdf/826/202405249648780826/202405249648780826.pdf); D'Esposito for New York, Amended 2022 October Quarterly Report (showing removal of contributions from Michael Hayde, Laura Khouri, and Cherna Moskowitz) (May 24, 2024), <https://docquery.fec.gov/pdf/871/202405249648780871/202405249648780871.pdf>; *see also* Resp. at 7 (discussion of contributions erroneously disclosed).

1 either on or very near the date the contributions were made, such that they are considered timely
 2 redesignations occurring within 60 days of the original contribution.¹⁹ While the Response
 3 contends that the redesignation of \$1,100 in funds from one individual was not accurately
 4 documented at filing and would be corrected after the filing of the Response, that amount
 5 remains excessive and uncorrected.²⁰

6 2. The Committee Ascertained that the Underlying Funds from Unregistered
 7 Organizations Complied with the Limitations and Prohibitions of the Act
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9 Unregistered organizations are broadly categorized as “[o]rganizations that are not
 10 political committees under the Act,”²¹ and as such “must demonstrate through a reasonable
 11 accounting method that, whenever such an organization makes a contribution . . . the
 12 organization has received sufficient funds subject to the limitations and prohibitions of the Act to
 13 make such contribution.”²² The treasurer of a political committee is responsible for ensuring that
 14 contributions received from unregistered organizations were made with permissible funds.²³

¹⁹ See e.g., D'Esposito for New York, Amended 2022 July Quarterly Report at 203 (Matthew Bruderman), (May 24, 2024), <https://docquery.fec.gov/pdf/581/202405249648780581/202405249648780581.pdf>; see also 11 C.F.R. § 103.3(b)(3) (“[I]f redesignation or reattributions is not obtained, the treasurer shall, within sixty days of the treasurer’s receipt of the contributions, refund the contribution to the contributor.”)

²⁰ Resp. at 5.

²¹ 11 C.F.R. § 102.5(b) (providing that any organization that makes contributions, expenditures, and exempted payments but that does not qualify as a political committee “must keep records of receipts and disbursements and, upon request, must make such records available for examination by the Commission”).

²² *Id.*

²³ *Id.* § 103.3(b) (“The treasurer shall be responsible for examining all contributions received for evidence of illegality and for ascertaining whether contributions received, when aggregated with other contributions from the same contributor, exceed the contribution limitations of 11 C.F.R. §§ 110.1 or 110.2.”); F&LA at 4-5, MUR 7872 (South Dakota Democratic Party) (finding reason to believe that a state party committee violated 11 C.F.R. § 103.3(b) by accepting contributions from unregistered organizations without ascertaining whether the underlying funds complied with the limitations and prohibitions of the Act); see Advisory Opinion (“AO”) 1982-38 (Moynihan) (concluding that recipients of “contributions from unregistered organizations which are not political committees under the Act must assume responsibility for determining that the contributions originally came from permissible sources”); AO 1988-33 (Republican Party of Florida) (“[T]he Act and Commission regulations impose certain affirmative duties on the various participants in the Federal election process,” such as recipient committees, “to prevent the infusion, directly or indirectly, of prohibited funds into the Federal election process.”).

1 On July 15, 2022, the Committee filed its 2022 July Quarterly Report, which disclosed
2 the receipt of apparent prohibited contributions totaling \$1,950 from three unregistered
3 organizations.²⁴ When the contributions were first disclosed in the original Report, there was no
4 indication that the contributions were made with verified permissible funds.²⁵ On May 24, 2024,
5 the Committee filed an Amended 2022 July Quarterly Report, stating that each “contribution
6 [was] from [a] verified source.”²⁶

7 On October 15, 2022, the Committee filed its 2022 October Quarterly Report, which
8 disclosed an apparent prohibited contribution of \$200 from one unregistered organization.²⁷
9 When the contribution was first disclosed in the original report, there was no indication that the
10 contribution were made with verified permissible funds.²⁸ On May 24, 2024, the Committee
11 filed an Amended 2022 October Quarterly Report stating that the “contribution [was] from [a]
12 verified source.”²⁹

13 3. Conclusion

14 The Committee’s amended reports and response indicate that the Committee timely
15 redesignated most of the excessive contributions and ascertained that the underlying funds from
16 unregistered organizations complied with the limitations and prohibitions of the Act, leaving an
17 apparent amount in violation of \$1,100 regarding excessive contributions, well below the

²⁴ D’Esposito for New York, 2022 July Quarterly Report (July 15, 2022), <https://docquery.fec.gov/pdf/254/202207159518737254/202207159518737254.pdf>.

²⁵ *Id.*

²⁶ D’Esposito for New York, Amended 2022 July Quarterly Report at 214, 221, 225, . (May 24, 2024), <https://docquery.fec.gov/pdf/581/202405249648780581/202405249648780581.pdf>

²⁷ D’Esposito for New York, 2022 October Quarterly Report (Oct. 15, 2022), <https://docquery.fec.gov/pdf/609/202210159532811609/202210159532811609.pdf>

²⁸ *Id.*

²⁹ Amended 2022 October Quarterly Report at 150 (May 24, 2024), <https://docquery.fec.gov/pdf/871/202405249648780871/202405249648780871.pdf>.

1 \$105,750 in the Referral.³⁰ Given this low remaining amount in violation, we believe that it
2 would not be a good use of the Commission's limited resources to pursue this matter further.
3 The current amount in violation is also well below the threshold for referring a matter to OGC or
4 the Alternative Dispute Resolution Office.³¹ Based on the above, we recommend that the
5 Commission exercise its prosecutorial discretion and decline to open a MUR in AR 23-04R.

6 **B. The Commission Should Find Reason to Believe that the Committee Failed to**
7 **Accurately Report Debt in RR 24L-02**

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9 The Act and the Commission's regulations require political committees to disclose the
10 amount and nature of outstanding debts and obligations owed by or to such political
11 committees.³² A debt or obligation, including a loan, written contract, written promise or written
12 agreement to make an expenditure, the amount of which is over \$500 shall be reported as of the
13 date on which the debt or obligation is incurred.³³

14 With respect to RR 24L-02, the Committee disclosed no debts on its 2022 30-Day Post-
15 General Report filed on December 8, 2022.³⁴ The Committee subsequently filed an Amended
16 2022 30-Day Post-General Report on July 20, 2023, which disclosed \$150,279.30 in debts

³⁰ As noted above, the Committee in its May 2024 amendments disclosed timely redesignations of \$92,900. Although the Committee's disclosure reports remained uncorrected for approximately two years, the failure to initially report redesignations in this amount is not referable under the Commission's applicable RAD Review and Referral Procedures and thus not worth the Commission's resources to pursue.

³¹ The threshold for the former and the latter being \$26,250, however, referral to OGC also requires that the total amount of apparent violations exceed one percent (1%) of the total contributions for the election cycle-to-date. Reports Analysis Division Review and Referral Procedures for the 2023 – 2024 Election Cycle at 65-66.

³² 52 U.S.C. § 30104(b)(8); 11 C.F.R. § 104.3(d).

³³ 11 C.F.R. § 104.11(b) (excepting certain categories of regularly reoccurring administrative expenses not relevant here).

³⁴ D'Esposito for New York, 2022 30-Day Post-General Report (Dec. 8, 2022), <https://docquery.fec.gov/pdf/255/202212089550179255/202212089550179255.pdf>.

1 incurred for the reporting period.³⁵ On October 5, 2023, RAD sent an RFAI asking the
2 Committee for clarification regarding the increase in debts compared to the original report.³⁶
3 The Committee did not submit any further communications in response to the RFAI until after
4 the Referral, on March 3, 2024, when the Committee filed a Miscellaneous Electronic Document
5 (FEC Form 99) stating that “[I]n reference to the RFAI concerning the increase in or debts owed
6 to vendors totaling \$150,279.30 on Line 10, the committee employees were in possession of
7 these debts and did not share them with the treasurer until a later date, at which time it felt
8 important to accurately reflect debts owed by the committee.”³⁷ The Committee filed the same
9 information in response to the Referral on March 13, 2024.

10 With respect to RR 24L-02, we recommend that the Commission find reason to believe
11 that the Committee violated 52 U.S.C. § 30104(b)(8) and 11 C.F.R. § 104.3(d) by failing to
12 accurately report debt.³⁸

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³⁵ D'Esposito for New York, Amended 2022 30-Day Post-General Report (July 20, 2023), <https://docquery.fec.gov/pdf/897/202307209583976897/202307209583976897.pdf>.

³⁶ Compl. at 2, RR 24L-02; D'Esposito for New York, RFAI at 1 (Oct. 5, 2023), <https://docquery.fec.gov/pdf/309/202310050300193309/202310050300193309.pdf>.

³⁷ See D'Esposito for New York, Miscellaneous Electronic Document (FEC Form 99) (Mar. 3, 2024), <https://docquery.fec.gov/pdf/115/202403039622301115/202403039622301115.pdf>.

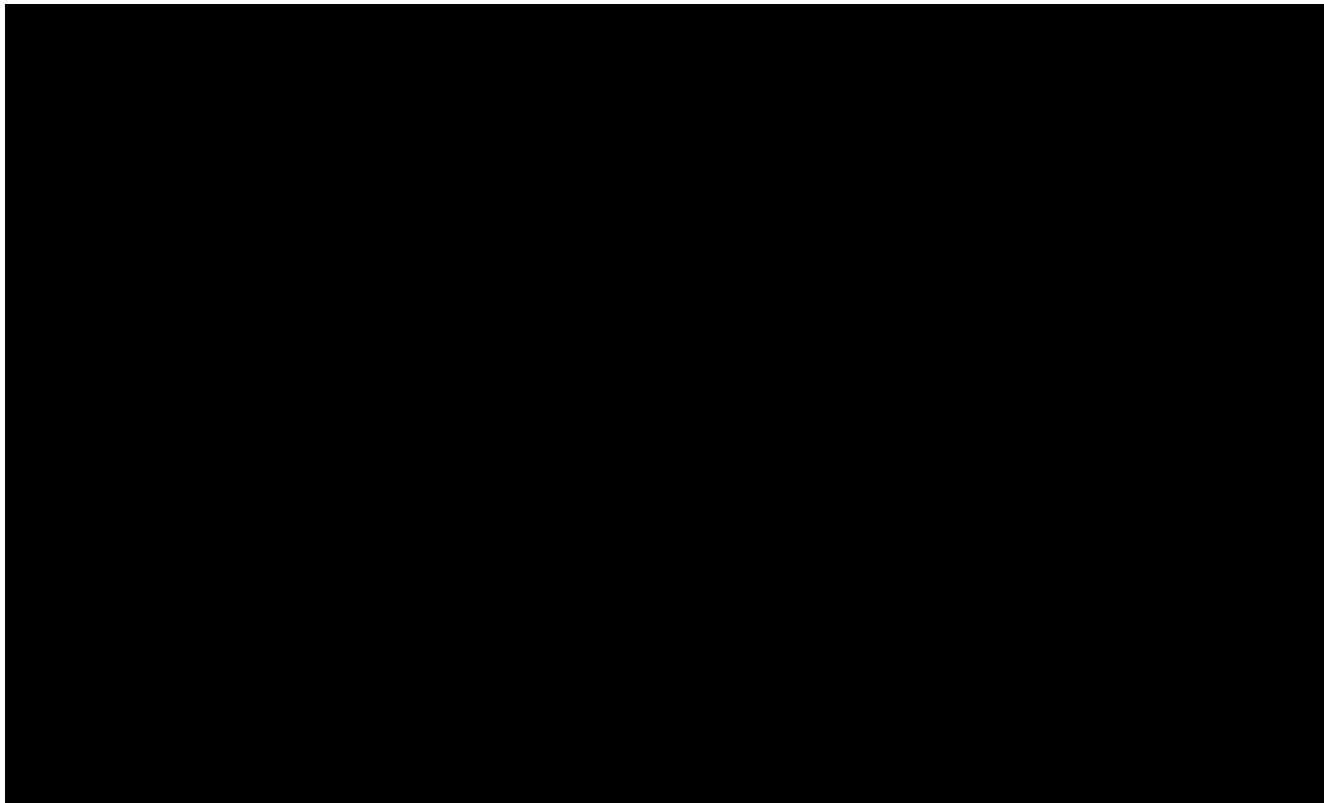
³⁸ The Commission has previously found reason to believe when a committee's original report failed to properly disclose the committee's debt. *E.g.*, F&LA at 9, MUR 8070 (Democratic Executive Committee of Florida).

AR 23-04R and RR 24L-02 (D'Esposito for New York)

First General Counsel's Report

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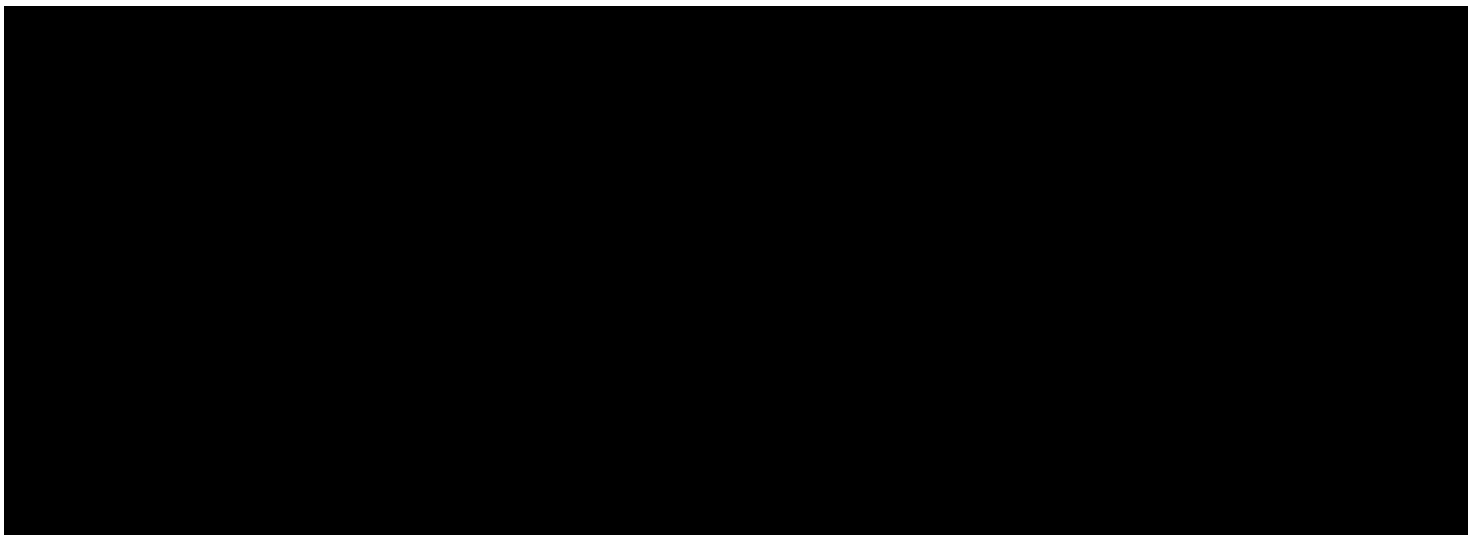
12 **IV. RECOMMENDATIONS**

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AR 23-04R:

1. Decline to open a Matter Under Review;
2. Approve the appropriate letter.

RR 24L-02:



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- 3. Open a Matter Under Review;
- 4. Find reason to believe that D'Esposito for New York and Claudia Armendinger in her official capacity as treasurer violated 52 U.S.C. § 30104(b)(8) and 11 C.F.R. § 104.3(d) by failing to report debt;
- 5. Approve the attached Factual and Legal Analysis;
- 6. Authorize pre-probable cause conciliation with D'Esposito for New York and Claudia Armendinger in her official capacity as treasurer;
- 7. Approve the attached proposed conciliation agreement; and
- 8. Approve the appropriate letter.

Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Associate General Counsel for Enforcement

June 28, 2024
Date

Claudio J. Pavia by MA

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Enforcement

Mark Allen

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