

BEFORE THE  
FEDERAL ELECTION COMMISSION

Federal Election Commission  
Office of General Counsel  
2015 NOV 19 PM 1:42

Robin Long

Hampton Bays, NY 11946

Complainant,

v.

Lee Zeldin  
P.O. Box 610  
Shirley, NY 11967,

Zeldin for Congress, and Nancy Marks, Treasurer  
47 Flintlock Drive  
Shirley, NY 11967, and

Zeldin for Senate  
47 Flintlock Drive  
Shirley, NY 11967,

MUR # 6985

Respondents.

COMPLAINT

Complainant files this complaint under 52 U.S.C. § 30109(a)(1) against Lee Zeldin, Lee Zeldin for Congress, and Nancy Marks, its Treasurer, in her official capacity (collectively, "Respondents") for violating the Federal Election Campaign Act of 1971, as amended ("the Act") and Federal Election Commission regulations, as described below.

**A. Factual Background**

On October 7, 2013, then-New York State Senator Lee Zeldin announced his candidacy for the United States House of Representatives in New York's First Congressional District.<sup>1</sup> His principal campaign committee is Zeldin for Congress (the "Federal Committee."). While

<sup>1</sup> Dan Friedman, *Republican State Sen. Zeldin Will Challenge Bishop on Long Island*, NEW YORK DAILY NEWS, October 7, 2013, <http://www.nydailynews.com/blogs/dc/republican-state-sen-zeldin-challenge-bishop-long-island-blog-entry-1.1663212>.

running for Congress, through his eventual election on November 4, 2014, Zeldin continued to maintain and operate his New York State Senate committee, Zeldin for Senate (the "State Committee"), which raised funds outside of the federal limits and source prohibitions.<sup>2</sup> Zeldin used these funds to directly benefit the Federal Committee.<sup>3</sup>

According to New York State Campaign Expenditures Reports, the State Committee spent \$3,765 on journal and ad space between January 2014 and October 2014.<sup>4</sup> Of particular note are the following disbursements for advertisements, which were made within 90 days before the June 24 primary and the November 4 general election. These advertisements presumably identified Zeldin, as is typically the case with journal advertisements of this nature.

<b>DATE</b>	<b>NAME</b>	<b>AMOUNT</b>
4/10/2014	Mahany's	\$100
4/10/2014	Temple Beth-El	\$300
4/21/2014	James Kavanaugh	\$125
4/30/2014	Suffolk County Court Officers Assoc.	\$95
4/30/2014	Chamber of Commerce of the Mastics and Shirley	\$1000
5/7/2014	Bayport Bluepoint Little League	\$125
6/11/2014	SCR and TA (Suffolk County Res. And Tavern Association)	\$200
8/14/2014	Suffolk County Deputy Sheriffs Police Benevolent Assoc.	\$235
9/26/2014	TRI Hamlet News	\$300
10/1/2014	Colonial Youth	\$300
10/1/2014	South Shore Press	\$275
10/13/2014	K of C of The Mastics	\$200

<sup>2</sup> A review of the State Committee's campaign finance reports reveals that it accepted contributions from corporations as well as contributions in excess of the federal limits. See New York State Board of Elections View Disclosure Reports, available at <http://www.elections.ny.gov/CFViewReports.html>.

<sup>3</sup> See, e.g., Zeldin for Senate, New York State Board of Elections Filer ID A54475, Jan. 2015 Periodic Report - Expenditures/Payments, available at [http://www.elections.ny.gov:8080/reports/rwservlet?cmdkey=cfs\\_sch\\_report+p\\_filer\\_id=A54475+p\\_e\\_year=2015+p\\_freport\\_id=J+p\\_transaction\\_code=F](http://www.elections.ny.gov:8080/reports/rwservlet?cmdkey=cfs_sch_report+p_filer_id=A54475+p_e_year=2015+p_freport_id=J+p_transaction_code=F).

<sup>4</sup> Zeldin for Senate, New York State Board of Elections Filer ID A54475, Jan. 2015 Periodic Report - Expenditures/Payments, available at [http://www.elections.ny.gov:8080/reports/rwservlet?cmdkey=cfs\\_sch\\_report+p\\_filer\\_id=A54475+p\\_e\\_year=2015+p\\_freport\\_id=J+p\\_transaction\\_code=F](http://www.elections.ny.gov:8080/reports/rwservlet?cmdkey=cfs_sch_report+p_filer_id=A54475+p_e_year=2015+p_freport_id=J+p_transaction_code=F); see also July 2014 Periodic Report - Expenditures/Payments, available at [http://www.elections.ny.gov:8080/reports/rwservlet?cmdkey=cfs\\_sch\\_report+p\\_filer\\_id=A54475+p\\_e\\_year=2014+p\\_freport\\_id=K+p\\_transaction\\_code=F](http://www.elections.ny.gov:8080/reports/rwservlet?cmdkey=cfs_sch_report+p_filer_id=A54475+p_e_year=2014+p_freport_id=K+p_transaction_code=F).

Moreover, based on a review of New York State and Commission campaign finance filings, some of the contributions made by the State Committee were reciprocated to the Federal Committee. Since Zeldin became a federal candidate, the State Committee donated more than \$58,000 of its funds to the Republican and Conservative Parties and their affiliated committees. A list of those contributions is attached as Attachment A.<sup>5</sup> These same committees and their affiliates, in turn, contributed a total of \$16,651 to the Federal Committee. A list of these contributions is attached as Attachment B.

Similarly, On April 1, 2014, Zeldin's State Committee made a donation of \$5,000 to Friends of Senft for Senate, the principal campaign committee of Anthony Senft, who was at the time a candidate for the New York State Senate.<sup>6</sup> The day before the State Committee made the donation, the Federal Committee received a contribution from Friends of Anthony Senft.<sup>7</sup>

## **B. Legal Argument**

### **1. The State Committee paid for coordinated communications that constituted illegal transfers to the Federal Committee.**

Under the Act, a federal candidate or an entity directly or indirectly established, financed, maintained or controlled by or acting on behalf of that candidate is prohibited from soliciting,

<sup>5</sup> See *id.* Jan. 2014 Periodic Report - Expenditures/Payments, available at <http://www.elections.ny.gov:8080/reports/rwservlet?cmdkey=efs sch report+p filer id=A54475+p e year=2014+p freport id=J+p transaction code=H>; July 2014 Periodic Report - Expenditures/Payments, available at <http://www.elections.ny.gov:8080/reports/rwservlet?cmdkey=efs sch report+p filer id=A54475+p e year=2014+p freport id=K+p transaction code=F>; Jan. 2015 Periodic Report - Expenditures/Payments, available at <http://www.elections.ny.gov:8080/reports/rwservlet?cmdkey=cfs sch report+p filer id=A54475+p e year=2015+p freport id=J+p transaction code=F>.

<sup>6</sup> See New York State Board of Elections, Zeldin for Senate, Filer ID A54475, July 2014 Financial Disclosure Report, available at <http://www.elections.ny.gov:8080/reports/rwservlet?cmdkey=efs sch report+p filer id=A54475+p e year=2014+p freport id=K+p transaction code=F>; see also New York State Board of Elections, Friends of Senft for Senate, Filer ID A19745, July 2014 Financial Disclosure Report, available at <http://www.elections.ny.gov:8080/reports/rwservlet?cmdkey=efs sch report+p filer id=A19745+p e year=2014+p freport id=K+p transaction code=C>.

<sup>7</sup> Zeldin for Congress, FEC Committee ID: C00552547, 2014 April Quarterly Report available at <http://www.fec.gov/fecviewer/CandCmteTransaction.do>.

receiving, directing, transferring or spending funds in connection with an election for federal office that are not subject to the limits, prohibitions, and reporting requirements of the Act.<sup>8</sup> The law also prohibits the transfer of funds or assets from a federal candidate's nonfederal campaign committee or account to his or her principal federal campaign committee or other authorized committee.<sup>9</sup>

Under Commission rules, an expenditure for a public communication will be considered an in-kind contribution to a campaign if it is (1) paid for by an entity other than the campaign; (2) meets certain content standards; and (3) meets certain conduct standards regarding the coordination between the person paying for the communication and the candidate's committee or an agent of the committee.<sup>10</sup> The term "public communication" includes "a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising."<sup>11</sup> For candidates for the United States House of Representatives a "public communication" that merely refers to a clearly identified candidate and that is distributed within the candidate's jurisdiction within the 90 days before that candidate's primary or general election satisfies the content prong, even if the advertisement lacks electoral advocacy.<sup>12</sup>

Here, the advertisements paid for by the State Committee were likely coordinated communications that constitute illegal in-kind contributions to Zeldin's Federal Committee totaling \$3,255. They were (1) paid for by Zeldin's State Committee, (2) distributed in his jurisdiction within the 90 days before his primary and general election, and (3) by, virtue of the

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<sup>8</sup> 52 U.S.C. § 30125(e).

<sup>9</sup> 11 C.F.R. § 110.3(d).

<sup>10</sup> *Id.* §§ 109.20(b), 109.21.

<sup>11</sup> *Id.* § 100.26.

<sup>12</sup> *Id.* § 109.21(c)(4)(i); *see also* Advisory Opinion 2004-01.

fact that they were placed by another committee under his control, the advertisements were made at the request or suggestion -- or, at the very least, with the material involvement -- of Zeldin and his agents. Assuming that the advertisements also identified Zeldin, which is typically the case with advertisements of this nature, the advertisements would have been illegal coordinated communications.

Assuming that they qualified as coordinated communications, Respondents violated multiple provisions of the Act and Commission rules. First, they violated the Commission's prohibition against making transfers from a candidate's nonfederal committee to his or her principal campaign committee.<sup>13</sup> Second, because the State Committee raises and spends funds outside of the federal limits and source prohibitions, unless the Federal Committee confirmed that the State Committee had sufficient federally permissible funds on hand to make the contributions, the Federal Committee accepted funds in violation of the Act's limits and source prohibitions.<sup>14</sup> Third, Respondents violated the Act by spending funds outside of the federal limits, source restrictions, and federal reporting requirements in connection with a federal election. Fourth, the Federal Committee failed to report these contributions as required by the Act and Commission rules.<sup>15</sup> And fifth, the State Committee may have violated the Act by failing to register and report as a political committee after making over \$3,000 in federal expenditures.<sup>16</sup>

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<sup>13</sup> *Id.* § 110.3(d).

<sup>14</sup> See 52 U.S.C. §§ 30116, 30118; Advisory Opinion 1982-38.

<sup>15</sup> 52 U.S.C. § 30102(c); 11 C.F.R. § 102.9(b); see FEC Committee ID C00552547 2014 Year End Report, available at <http://www.fec.gov/fecviewer/CandidateCommitteeDetail.do>.

<sup>16</sup> 52 U.S.C. §§ 30101(4)(A); .

**2. Respondents made illegal transfers from the State Committee to the Federal Committee in the form of reciprocal contributions.**

In addition to receiving illegal transfers in the form of coordinated communications, Zeldin also made illegal transfers from the State Committee to the Federal Committee using a network of political party committees as an intermediary. Since Zeldin became a federal candidate, the State Committee made over \$58,000 in contributions to Republican and Conservative party committees.<sup>17</sup> In turn, these committees endorsed Zeldin for Congress and provided generous financial support to the Federal Committee, making over \$16,000 in direct financial contributions to his campaign.<sup>18</sup> In many cases, the contributions were made by the State Committee to an intermediary committee that, in turn, made a direct contribution to the Federal Committee. For example:

- On October 25, 2013, the State Committee made a \$500 contribution to the Committee to Elect a Republican Majority (CERM). In March of 2014, CERM made a \$1,000 contribution to the Federal Committee.
- On December 2, 2013, the State Committee made a \$100 contribution to the Smithtown Women Republicans Club. In July 2014, that same club made a \$500 contribution to the Federal Committee.
- On January 16 and 25 and on September 17, 2014, the State Committee made contributions of \$1,500, \$1,000, and \$1,500, respectively, to the Smithtown Republican Victory Committee. That same Committee made a \$300 contribution to the Federal Committee on November 15, 2013 and a \$700 contribution to the Federal Committee on March 28, 2014.
- On January 25, 2014, the State Committee made a \$1,000 contribution to the Islip Conservatives. In March 2014, that same committee made a \$1,000 contribution to the Federal Committee.
- In March, 2014, the State Committee made a \$1,000 contribution to the New York State Conservative Party, while the New York State Conservative Party made a \$1,000 contribution to the Federal Committee.

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<sup>17</sup> See Attachment A.

<sup>18</sup> See Attachment B.

- On August 22, 2014, the State Committee made a \$1,000 contribution to the Babylon Conservative Committee; that same committee contributed \$100 to the Federal Committee in December 2013.
- On October 28, 2014, the State Committee made a \$1,000 contribution to the Suffolk County Conservative Chairman's Club. That same club contributed \$1,000 to the Federal Committee in June of the same year.

Similarly, on April 1, 2014, the State Committee made a contribution of \$5,000 to Friends of Senft for Senate a day after the Federal Committee received a \$1,000 contribution from Friends of Anthony Senft.

These reciprocal transfers demonstrate an attempt for Zeldin to funnel funds from the State Committee to the Federal Committee. In past matters, the Commission has found that these types of reciprocal transfers violate the Act,<sup>19</sup> and it should do the same here.

### **C. Requested Action**

As shown, Respondents have violated the Act and Commission regulations by making illegal transfers from Zeldin's State Committee to his Federal Committee, violating the Act's soft money ban, and failing to properly disclose this activity to the public. For these reasons, we respectfully request that the Commission promptly investigate these violations, and that Respondents be enjoined from further violations and be fined the maximum amount permitted by law.

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<sup>19</sup> See Advisory Opinion 1996-33; FEC Matter Under Review 5278 (Gingrey for Congress).

Sincerely,

Rhian L Long

SUBSCRIBED AND SWORN to before me this 12 day of November, 2015.

Dawn Carlino

Notary Public

**DAWN CARLINO**  
Notary Public, State of New York  
No. 01CA6110682  
Qualified In Queens County  
Commission Expires June 01, 2016

My Commission Expires:

6-1-16

**ATTACHMENT A**

**State Committee Nonfederal Donations**

<b>DATE</b>	<b>COMMITTEE</b>	<b>PARTY</b>	<b>AMOUNT</b>
10/08/2013; 10/21/2013	Suffolk County Republican Committee	Republican	\$2,000
10/21/2013	Suffolk County Conservative Chairmans Club	Conservative	\$1,000
10/25/2013	(CERM) Committee to Elect a Republican Majority	Republican	\$500
11/15/2013	Islip Republican Committee	Republican	\$500
11/19/2013	Suffolk County Republican Women PAC	Republican	\$60
11/20/2013	NYS Young Republicans	Republican	\$250
12/2/2013	Smithtown Women Republicans Club	Republican	\$100
12/9/2013	Suffolk County Conservative Chairmans Club	Conservative	\$1,000
12/9/2013	BTRC (Brookhaven Town Republican Committee)	Republican	\$1,000
1/13/2014	Suffolk County Republican Committee	Republican	\$10,000
1/16/2014	Committee To Elect A Republican Majority	Republican	\$4,000
1/16/2014	Smithtown Victory Fund	Republican	\$1,500
1/23/2014	NYS Conservative Party	Conservative	\$1,000
1/23/2014	NYS Senate Republicans	Republican	\$5,000
1/25/2014	Suffolk County Conservatives	Conservative	\$10,000
1/25/2014	Islip Conservatives	Conservative	\$1,000
1/25/2014	Brookhaven Conservatives	Conservative	\$1,000
1/25/2014	Smithtown Victory Fund	Republican	\$1,000
1/30/2014	Islip Young Republicans	Republican	\$250
2/07/2014	NY Republican CTY Committee	Republican	\$500
2/18/2014	Suffolk County Republican Women	Republican	\$200
3/17/2014	NY State Young Republicans	Republican	\$100
3/21/2014	NYS Conservative Party	Conservative	\$1,000
4/16/2014	Smithtown Rep Victory Fund	Republican	\$500
4/30/2014	Suffolk County Republican Committee	Republican	\$1,000

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6/18/2014	NYS Conservative Party	Conservative	\$1,000
7/10/2014	Islip Republican Committee	Republican	\$2,000 (2x \$1,000)
7/17/2014	Suffolk County Young Republicans	Republican	\$1,000
07/21/2014	Suffolk County Republican Women's PAC	Republican	\$100
7/28/2014	(CERM) Committee to Elect a Republican Majority	Republican	\$2,000
8/22/2014	Babylon Conservative Committee	Conservative	\$75
8/27/2014	Suffolk County Republican Committee	Republican	\$5,000
09/17/2014	Smithtown Republican Victory Committee	Republican	\$1,500
10/28/2014	Suffolk County Conservative Chairman's Club	Conservative	\$1,000

