



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

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APR 11 2017

RE: MUR 6985  
Zeldin for Congress and Nancy  
Marks in her official capacity as  
treasurer

Dear Messrs. Spies and Tyrrell:

On November 24, 2015, the Federal Election Commission notified your clients, Zeldin for Congress and Nancy Marks in her official capacity as treasurer ("Committee"), of a complaint alleging violation of certain sections of the Federal Election Campaign Act of 1971, as amended.

On March 23, 2017, the Commission found, on the basis of the information in the complaint and information provided by you, that there is no reason to believe that the Committee violated 52 U.S.C. §§ 30104(a) or 30125(e). Accordingly, the Commission closed the file in this matter as it pertains to the Committee. The Factual and Legal Analysis, which more fully explains the Commission's findings, is enclosed for your information.

The Commission reminds you that the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A) remain in effect, and that this matter is still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

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If you have any questions, please contact Elena Paoli, the attorney assigned to this matter,  
at (202) 694-1548 or [epaoli@fec.gov](mailto:epaoli@fec.gov).

Sincerely,



Mark Allen  
Assistant General Counsel

Enclosure  
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENTS:** Zeldin for Congress and Nancy Marks in her **MUR 6985**  
4 official capacity as treasurer  
5

6 **I. INTRODUCTION**

7 This matter was generated by a complaint filed with the Federal Election Commission  
8 alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by  
9 Zeldin for Congress and Nancy Marks in her official capacity as treasurer.

10 **II. FACTS**

11 This matter relates to U.S. Representative Lee Zeldin, a former New York state senator,  
12 and transactions involving his federal and state political committees after Zeldin announced his  
13 federal candidacy in October 2013. The Complaint alleges that Zeldin for Senate ("State  
14 Committee") raised and spent funds outside of the limits and source prohibitions of the Federal  
15 Election Campaign Act of 1971, as amended (the "Act"), including improper transfers to Zeldin  
16 for Congress ("Federal Committee") via reciprocal contributions from state and local political  
17 committees and candidates, and coordinated advertisements. The Complaint also alleges that the  
18 Federal Committee accepted illegal contributions from the State Committee's transfer of  
19 nonfederal funds, and that the Federal Committee failed to report those contributions. Finally,  
20 the Complaint alleges that the State Committee may have failed to register and report with the  
21 Commission as a federal political committee based on its spending and other activities. In a joint  
22 response, Lee Zeldin, the State Committee, and the Federal Committee ("Zeldin Response")  
23 deny that they improperly caused State Committee funds to be transferred to the Federal  
24 Committee or coordinated the ads.

25 In 2013, Lee Zeldin was a state senator in Suffolk County, New York. On October 7,  
26 2013, Zeldin announced that he would seek the U.S. House seat in New York's First

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1 Congressional District in 2014. The Commission received Zeldin's Statement of Candidacy on  
2 October 21, 2013, and the Federal Committee's Statement of Organization on November 26,  
3 2013.

4 The State Committee remained active while Zeldin completed his state senate term and  
5 campaigned for the U.S. House.<sup>1</sup> New York State allows state candidates to receive  
6 contributions that would be impermissible under the Act; for example, a corporation can  
7 contribute \$5,000 to a candidate per year.<sup>2</sup> During the 2012 and 2014 election cycles, the  
8 contribution limit for a state senate candidate was \$6,500 for the primary election and \$10,300  
9 for the general election.<sup>3</sup> Zeldin's State Committee accepted such contributions.<sup>4</sup> In addition,  
10 political committees in New York cannot terminate if funds remain in their accounts.<sup>5</sup> Under  
11 New York law, state officeholders who wish to terminate their committees may spend down their  
12 accounts through donations to other political committees.<sup>6</sup>

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<sup>1</sup> The State Committee terminated on April 28, 2016. *See* New York State Board of Elections campaign finance disclosure website ([http://www.elections.ny.gov:8080/plsql\\_browser/getfiler2\\_loaddates](http://www.elections.ny.gov:8080/plsql_browser/getfiler2_loaddates)). It does not appear that Zeldin ever sought to be a candidate for the state senate seat in 2014.

<sup>2</sup> *See* N.Y. ELEC. LAW § 14-116(2) (McKinney 2016).

<sup>3</sup> *See id.* § 14-114(b); N.Y. COMP. CODES R. & REGS. tit. 9, § 6214.0 (2016). A candidate's family members have a separate, higher limit. *See* N.Y. ELEC. LAW § 14-114(b).

<sup>4</sup> *See, e.g.*, State Committee 2014 January Periodic Report, Schedules A and B.

<sup>5</sup> *See* N.Y. Comp. Codes R. & Regs. tit. 9, § 6200.2(b) (2016).

<sup>6</sup> *See* New York State Board of Elections Campaign Finance Handbook at 46 (2014).

1 **III. LEGAL ANALYSIS**

2  
3 **A. There is no Reason to Believe Respondents Illegally Transferred Funds to the**  
4 **Federal Committee Through Reciprocal Contributions**

5  
6 The Complaint identifies a dozen instances after Zeldin announced his federal candidacy  
7 when the State Committee made a contribution to a state or local political organization that was  
8 preceded or followed by a contribution to the Federal Committee by that same organization.<sup>7</sup>

9 The Complaint alleges that the Federal Committee received \$16,651 of these reciprocal  
10 contributions as part of a scheme to impermissibly transfer State Committee funds to the Federal  
11 Committee.<sup>8</sup>

12 The Zeldin Respondents argue that none of the State Committee contributions were  
13 earmarked or contained any “designations, instructions and encumbrances,” and that the State  
14 Committee made no other express or implied instruction to the recipient committees.<sup>9</sup>

15 The Commission has considered arrangements to transfer a state committee’s funds into a  
16 federal committee’s account through intermediaries. In MUR 5278, candidate Gingrey admitted  
17 in a state proceeding to having arranged “reciprocal contributions” for the purpose of funneling  
18 state funds into his federal account.<sup>10</sup> Similarly, in an advisory opinion, the Commission found

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7 See Compl. at 6-7 and Attachs. A, B.

8 Compl. at 3.

9 Zeldin Resp. at 5.

10 Factual & Legal Analysis at 3-4, MUR 5278 (Gingrey). Gingrey acknowledged four reciprocal transfers, three of which involved the same amount of money on the same day or a few days apart. The fourth involved contributions of \$1,000 and \$500 about five months apart. See *id.* The Commission entered into a conciliation agreement with the Gingrey Committee for this violation and others, and the Committee paid a \$1,800 civil penalty.

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1 impermissible the requestor's plan to use surplus state funds to make indirect transfers to the  
2 requestor's federal committee.<sup>11</sup>

3 In contrast, the Zeldin Respondents deny that such indirect transfers occurred, and a  
4 review of the available information reveals that most of the alleged reciprocal contributions do  
5 not match up closely in amounts or time.<sup>12</sup> For example, in the first transaction identified in the  
6 Complaint, the State Committee contributed \$500 to the Committee to Elect a Republican  
7 Majority ("CERM") on October 25, 2013, and CERM contributed \$1,000 to the Federal  
8 Committee on March 20, 2014, about five months later.<sup>13</sup> Similarly, the second such identified  
9 transaction involves a \$100 transfer from the State Committee to the Smithtown Women's  
10 Republican Club in early December 2013 and a \$500 contribution from that group to the Federal  
11 Committee over seven months later.<sup>14</sup> Further, the Federal Committee, in response to requests  
12 sent by the Reports Analysis Division regarding contributions from unregistered organizations,  
13 including state and local political committees, has responded that the contributions were made  
14 using permissible funds.<sup>15</sup>

15 Thus, although the State Committee donated funds to state and local political  
16 organizations that contributed to the Federal Committee, there is not a sufficient factual nexus  
17 between the transactions to conclude that the State Committee was impermissibly funneling its

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<sup>11</sup> Advisory Op. 1996-33 (Colantuono) (Requester sought to contribute surplus state funds to fellow state legislators who would then make "roughly equivalent" contributions to Colantuono's federal committee).

<sup>12</sup> In fact, two respondents stated they received no donations from the State Committee.

<sup>13</sup> See Compl. at 6.

<sup>14</sup> *Id.*

<sup>15</sup> In the current cycle, RAD has sent the Federal Committee only one RFAI regarding two \$1,000 contributions from unregistered entities. The Federal Committee responded that those contributions came from permissible funds. See Zeldin for Congress 2016 Pre-Primary (amended) (Aug. 30, 2016).

1 funds to the Federal Committee. Thus, the Commission finds no reason to believe the Federal  
2 Committee accepted and failed to report the receipt of prohibited funds through indirect transfers  
3 from the State Committee.

4 **B. Journal Advertisements**

5 The Complaint alleges that the State Committee paid \$3,765 for “journal” advertisements  
6 featuring Zeldin from January through October 2014 that constitute coordinated communications  
7 and prohibited in-kind transfers to the Federal Committee.<sup>16</sup>

8 The Zeldin Respondents state that the ads at issue are sponsored pages in booklets and  
9 journals printed by various local civic, religious, and charitable organizations that typically honor  
10 individuals or groups for their achievements.<sup>17</sup> They assert that the ads were placed solely in  
11 Zeldin’s capacity as state senator and contain no electoral advocacy, and they deny that the ads  
12 constitute coordinated communications.<sup>18</sup> The Zeldin Respondents supplied examples of such  
13 ads; they contain a headline reading “Senator Lee M. Zeldin,” Zeldin’s photograph, his  
14 congratulations or “best wishes,” and his contact information. They make no reference to  
15 Zeldin’s status as a federal candidate and do not describe him in any manner.<sup>19</sup> One of the ads is  
16 reproduced below.

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<sup>16</sup> Compl. at 2-4.

<sup>17</sup> Zeldin Resp. at 2.

<sup>18</sup> *Id.*

<sup>19</sup> *See id.* at 7-11.

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## Senator Lee M. Zeldin



Congratulations to the  
James V. Kavanaugh Columbiettes  
and  
Honorees  
Rose Marie Oliveri, Barabara Kruk, Bill  
Guiducci, and Lynda Zachon  
~ Senator Lee Zeldin

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1  
2 Under Commission regulations, a communication is coordinated with a candidate, an  
3 authorized committee, or agent thereof if it meets a three-pronged test: (1) payment for the



1 communication by a third party; (2) satisfaction of one of the “content” standards;<sup>20</sup> and (3)  
2 satisfaction of one of the “conduct” standards.<sup>21</sup>

3           The ads here do not appear to be coordinated communications because they do not satisfy  
4 the payment prong. The Commission has determined that an advertisement paid for by a federal  
5 candidate’s state committee does not constitute payment by a third party.<sup>22</sup> Therefore, the  
6 Commission finds no reason to believe that the Zeldin for Congress violated the Act by  
7 accepting and failing to report prohibited contributions in the form of coordinated  
8 communications.

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<sup>20</sup> 11 C.F.R. § 109.21(c)(1)-(5).

<sup>21</sup> 11 C.F.R. § 109.21(d)(1)-(6).

<sup>22</sup> See AO 2009-26 at 10; AO 2007-01 at 5; F&LA, MUR 6601 (Oelrich for Congress) at 9 n.10.

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