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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT:**                  Smithtown Women’s Republican Club

**I.      INTRODUCTION**

          This matter was generated by a complaint filed with the Federal Election Commission alleging violations of the Federal Election Campaign Act of 1971, as amended (the “Act”), by Smithtown Women’s Republic Club.

**II.     FACTUAL AND LEGAL ANALYSIS**

          In 2013, Lee Zeldin was a state senator in Suffolk County, New York. On October 7, 2013, Zeldin announced that he would seek the U.S. House seat in New York’s First Congressional District in 2014. The Commission received Zeldin’s Statement of Candidacy on October 21, 2013.

          The State Committee remained active while Zeldin completed his state senate term and campaigned for the U.S. House.<sup>1</sup> New York State allows state candidates to receive contributions that would be impermissible under the Act; for example, a corporation can contribute \$5,000 to a candidate per year.<sup>2</sup> During the 2012 and 2014 election cycles, the contribution limit for a state senate candidate was \$6,500 for the primary election and \$10,300

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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).

1 for the general election.<sup>3</sup> Zeldin's State Committee accepted such contributions.<sup>4</sup> In addition,  
2 political committees in New York cannot terminate if funds remain in their accounts.<sup>5</sup> Under  
3 New York law, state officeholders who wish to terminate their committees may spend down their  
4 accounts through donations to other political committees.<sup>6</sup>

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

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

11 The Commission has considered arrangements to transfer a state committee's funds into a  
12 federal committee's account through intermediaries. In MUR 5278, candidate Gingrey admitted  
13 in a state proceeding to having arranged "reciprocal contributions" for the purpose of funneling  
14 state funds into his federal account.<sup>9</sup> Similarly, in an advisory opinion, the Commission found

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<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).

<sup>7</sup> See Compl. at 6-7 and Attachs. A, B.

<sup>8</sup> Compl. at 3.

<sup>9</sup> 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.

1 impermissible the requestor's plan to use surplus state funds to make indirect transfers to the  
2 requestor's federal committee.<sup>10</sup>

3 A review of the available information reveals that most of the alleged reciprocal  
4 contributions do not match up closely in amounts or time.<sup>11</sup> For example, in the first transaction  
5 identified in the Complaint, the State Committee contributed \$500 to the Committee to Elect a  
6 Republican Majority ("CERM") on October 25, 2013, and CERM contributed \$1,000 to the  
7 Federal Committee on March 20, 2014, about five months later.<sup>12</sup> The closest alleged reciprocal  
8 contribution appears to involve Islip Town Conservative Executive Committee ("ITCEC"). On  
9 January 25, 2014, the State Committee contributed \$1,000 to ITCEC, and on March 19, 2014,  
10 ITCEC contributed the same amount to the Federal Committee.

11 The Smithtown Women's Republican Club ("SWRC"), for its part, received a \$100  
12 contribution from the State Committee on December 2, 2013, and made a \$500 contribution to  
13 the Federal Committee on July 23, 2014, over seven months later.<sup>13</sup>

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

18 Thus, there is no reason to believe that Smithtown Women's Republican Club violated  
19 the Act.

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<sup>10</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>11</sup> In fact, the Commission has information indicating that two respondents received no donations from the State Committee.

<sup>12</sup> See Compl. at 6.

<sup>13</sup> See *id.*