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June 13, 2017

Chairman Steven T. Walther
Federal Election Commission
999 E Street, NW
Washington, DC 20463
VIA HAND DELIVERY

Re: MUR 6985: Response to Reason to Believe Finding

Dear Chairman Walther:

We are writing this letter on behalf of Congressman Lee Zeldin and Zeldin for Senate ("ZFS" or the "State Committee"), Congressman Zeldin's former New York State Senate campaign (collectively, the "Respondents"), in response to your letter dated April 11, 2017, in which you inform Respondents of the Commission's finding Reason to Believe ("RTB") that they violated 52 U.S.C. § 30125(c)(1)(B), a provision of the Federal Election Campaign Act of 1971, as amended (the "Act"). Included in your letter are the Office of General Counsel's ("OGC") Factual and Legal Analysis ("F&LA") and a proposed pre-probable cause conciliation agreement. Although we believe the Complaint should be dismissed for the reasons set forth below, by submitting this response, we are not waiving our ability to engage in pre-probable cause conciliation negotiations on behalf of Respondents.

The Commission appears to have based its RTB finding and proposed conciliation agreement on allegations and facts that were not contained in the complaint, and to which Respondents were never afforded the opportunity to respond. Even more troubling, however, is that OGC appears to have based its RTB recommendation to the Commission and its F&LA on unsworn allegations and facts that it discovered pursuant to an impermissible pre-RTB investigation. Such ad hoc practices by OGC fly in the face of due process and transparency and cannot legitimately form the basis for an RTB finding. We were also particularly surprised to see that the Commission's notification letter was signed by Chairman Walther, who just several years ago fought vigorously, and authored a draft policy, to curb such ad hoc practices and pre-RTB investigations by OGC. In that draft policy, then-Commissioner Walther asserted that:

> A respondent will be given written notice by the OGC in the event that the OGC intends to include in its RTB recommendation to the Commission (1) any additional facts or information known to OGC and not created or controlled by the respondent, which are deemed material to the RTB recommendation, and (2) **any potential violation of the Act and/or the Regulations that may not have been specifically alleged in the complaint**/referral notification, and the facts and arguments supporting the potential RTB recommendation on the additional potential violation.[1]

OGC's recommendations to the Commission and its F&LA in this matter are squarely at odds with Chairman Walther's insistence that OGC provide written notice to Respondents, before the Commission votes to find RTB, of any additional facts or information that are material to the RTB recommendation.

In short, because the only two allegations actually stated in the complaint were fully refuted by Respondents and resoundingly dismissed by the Commission after reviewing our initial response, we respectfully request that the Commission rescind its RTB finding and dismiss this matter. In the alternative, and at a minimum, the Commission should withdraw its RTB finding and direct OGC to provide revised recommendations and analysis to the Commission based solely on the allegations and facts within the four corners of the complaint—not those stemming from OGC's *ultra vires* and ad hoc pre-RTB investigation.

I. Procedural History

A. The Complaint and Response

The Complaint in this matter was filed on November 19, 2015. The Complainant, Robin Long, made two allegations: (1) that "the State Committee paid for coordinated communications that constituted illegal transfers" to Zeldin for Congress (the "Federal Committee")[2]; and, (2) that "Respondents made illegal transfers from the State Committee to the Federal Committee in the form of reciprocal contributions."[3] As support for the Complaint's first allegation, the Complainant cites twelve (12) disbursements made by the State Committee for journal advertisements, all except one of which were in amounts of $300 or less.[4] To support the second allegation regarding reciprocal contributions, Ms. Long cites thirty-five (35) disbursements, totaling $58,135, made by the State Committee to a number of state and local conservative and Republican organizations[5] and fourteen (14) contributions received by the Federal Committee by

[1] Proposed Draft Policy on Agency Procedure for Notice to Named Respondents of Additional Material Facts or Additional Potential Violations, Agenda Document No. 13-21-L (Walther Draft) (Aug.21, 2013).
[2] Complaint at 3.
[3] Complaint at 6.
[4] Complaint at 2.
[5] *See* Complaint, Attachment A.

some of the same organizations.[6] In making these allegations, the Complainant also cites to the State Committee's campaign finance reports filed with the New York State Board of Elections,[7] and specifically to three of those reports—the January 2014 Periodic Report, the July 2014 Periodic Report, and the January 2015 Periodic Report.[8] Importantly, the time period covered by the allegations in the Complaint only include the period from October 7, 2013, when Congressman Zeldin became a federal candidate, "through his eventual election on November 4, 2014."[9]

The Complainant also theorizes, but does not include as a separate allegation in the Complaint, that "[w]hile running for Congress, through his eventual election on November 4, 2014, Zeldin continued to maintain and operate his New York State Senate committee...which raised funds outside the federal limits and source prohibitions."[10] Ms. Long also vaguely suggests, in the context of her coordinated communications argument, that "because the State Committee raises and spends funds outside the federal limits and source prohibitions...the Federal Committee accepted funds in violation of the Act's limits and source prohibitions."[11] However, the Complainant qualifies her suggestion by saying, "unless the Federal Committee confirmed that the State Committee had sufficient federally permissible funds on hand to make the contributions..."[12] Significantly, nowhere in the Complaint does Ms. Long provide any evidence that the State Committee did not have sufficient federally permissible funds to cover the cited disbursements and contributions to other state and local organizations.

We filed our response to the Complaint on January 15, 2016. In our response, we refuted the only two allegations actually contained in the Complaint and provided evidence and analysis as to why Complainant's coordinated communications and reciprocal contributions arguments held no water and should be dismissed.

B. The Commission's Reason to Believe Finding and Factual and Legal Analysis

We were informed of the Commission's RTB finding, and OGC's F&LA and proposed conciliation agreement by email from staff attorney, Elena Paoli, on April 17, 2017. In the F&LA, the Commission unequivocally dismissed both of the allegations actually contained in the Complaint, namely, (1) the Complainant's accusation that Respondents illegally transferred funds to the Federal Committee through reciprocal contributions; and, (2) the Complainant's claim that the State Committee paid for coordinated communications that constituted illegal transfers to the Federal Committee. Nevertheless, despite the fact that Respondents thoroughly refuted the two allegations actually contained in the Complaint, and those claims were resoundingly dismissed, the Commission still took it upon itself to find reason to believe that

[6] *See* Complaint, Attachment B.
[7] *See* Complaint, n.2.
[8] *See* Complaint, n. 3, 4 & 5.
[9] Complaint at 2; *see also* Complaint, n. 2, 3, 4 & 5.
[10] Complaint at 1-2.
[11] Complaint at 5.
[12] Complaint at 5.

Congressman Zeldin and the State Committee "raised and spent nonfederal funds after Zeldin became a federal candidate,"[13] a claim that was neither included in the Complaint's legal argument nor supported with adequate evidence.

Specifically, Part B of the F&LA maintains that after Congressman Zeldin became a federal candidate on October 7, 2013, "[t]he State Committee's disclosure reports reveal that...it received $1,000 from corporate entities and contributed or transferred $99,655 to 39 state and local political committees **through December 23, 2015**, the date the State Committee spent its last funds."[14] The F&LA then tacks a footnote to the end of this line, which cites pages 1 and 2 of the Complaint and asserts that "[t]he Complaint generally alleges that the State Committee accepted nonfederal funds after Zeldin became a federal candidate."[15] However, this assertion conveniently ignores the plain language of pages 1 and 2 of the Complaint, which states that "[w]hile running for Congress, **through his eventual election on November 4, 2014**, Zeldin continued to maintain and operate his New York State Senate committee...which raised funds outside of the federal limits and source prohibitions."[16] The Complaint therefore did not "generally"[17] allege that ZFS accepted nonfederal funds "after Zeldin became a federal candidate,"[18] because the Complainant explicitly limited her allegations to the time period from when Congressman Zeldin became a federal candidate "through his eventual election on November 4, 2014."[19]

The Complainant's clear intent to limit consideration of ZFS's financial activities to the October 7, 2013 through November 4, 2014 time period is further buttressed by the fact that Attachment A to the Complaint only lists ZFS's contributions to other conservative and Republican committees and organizations from October 8, 2013 through October 28, 2014—NOT through December 23, 2015.[20] This is precisely why the Complaint explicitly asserts that the State Committee donated "$58,000 of its funds to the Republican and Conservative Parties and their affiliated committees" since Zeldin became a federal candidate.[21] Notably, the Complaint does NOT allege that the State Committee "contributed or transferred $99,655"[22] to such committees, as that figure was manufactured by OGC in the F&LA after investigating activity and specific disbursements that were never even mentioned in the Complaint.

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[13] F&LA at 3.
[14] F&LA at 3.
[15] F&LA, n. 9.
[16] Complaint at 1-2.
[17] F&LA, n. 9.
[18] *Id.*
[19] Complaint at 2.
[20] Complaint, Attachment A.
[21] Complaint at 3.
[22] F&LA at 3.

In reality, the only actual evidence cited by the Complainant are three reports filed by ZFS with the New York State Board of Elections—the January 2014 Periodic Report,[23] the July 2014 Periodic Report,[24] and the January 2015 Periodic Report,[25] which does not include activity "through December 23, 2015, the date the State Committee spent its last funds."[26] Remarkably, the F&LA concedes that "the Complaint only identifies State Committee contributions to state and local political committees through October 28, 2014," but it attempts to justify its consideration of activity outside the four corners of the Complaint simply by stating that "[t]he State Committee's publicly available reports provide more specific information about contributions received, and those reports revealed that the State Committee made state and local political contributions until late 2015." OGC would only have been able to come to such a conclusion by considering activity occurring after November 4, 2014, none of which was included in the allegations in the Complaint.

After taking into account activity and allegations mentioned nowhere in the Complaint to arrive at its conclusion that the State Committee "contributed or transferred $99,655" to state and local political committees, OGC in the F&LA posits, without definitive evidence, that "some portion of the $99,655...were funds that did not comply with the Act's amount limitations and source prohibitions."[27] OGC attempts to bolster this conclusion in the F&LA by presenting its own self-serving accounting of contributions made to the State Committee over the course of 2013, where it argues that "at least 39% of the State Committee's available funds at this time period consisted of demonstrably impermissible federal funds."[28] Of course, the F&LA fails to take into account prior years' contributions to the State Committee in its calculations, and it opportunely omits the fact that neither the Complaint nor OGC, through its extra-statutory pre-RTB investigation, has provided any evidence that the remaining sixty-one percent (61%) of contributions received by the State Committee in 2013, amounting to over $155,000, consisted of impermissible nonfederal funds.

The F&LA correctly notes that "the Commission has allowed a state officeholder and federal candidate to donate federally permissible funds in a state account to other state and local political committees if the state committee uses a 'reasonable accounting method' to separate permissible from impermissible funds, and it makes the contributions with the permissible funds."[29] However, incredibly, instead of acknowledging the fact that the Complaint (and OGC's pre-RTB investigation) failed to offer evidence—as opposed to mere speculation—that ZFS made contributions to the state and local committees using impermissible nonfederal funds, it resorts to shifting the burden to Respondents to prove a negative, stating that "we do not have information that the State Committee used such an accounting method and thus only used federally

[23] Complaint, n. 5.
[24] Complaint, n. 4 & 5.
[25] Complaint, n. 3, 4 & 5.
[26] Complaint at 3.
[27] F&LA at 4.
[28] Complaint, n. 14.
[29] F&LA at 4-5 & n. 15 (citing Advisory Op. 2007-26 (Schock) at 3-5; Advisory Op. 2006-38 (Casey) at 4).

permissible funds to make the contributions."[30] In reality, the Complaint fails to provide any conclusive evidence whatsoever that ZFS did not use permissible federal funds to make such contributions. Instead, the Complainant simply infers that impermissible funds were used and attempts, like the F&LA, to shift the burden to Respondents by conditioning its allegations and asserting that they are true and valid "unless...the State Committee had sufficient federally permissible funds on hand to make the contributions."[31]

Lastly, the F&LA notes that the "State Committee also accepted $3,150 in contributions after Zeldin became a federal candidate and was no longer a state candidate," and that "of that, $1,000 appears to be from corporations."[32] It is unclear how OGC came to the conclusion that then-Senator Zeldin was "no longer a state candidate" when the State Committee allegedly accepted these contributions. The F&LA does not provide any information about the alleged corporate contributions, so it is difficult to pinpoint the contributions at issue. However, it is possible the F&LA is referring to a pair of $500 contributions that the State Committee received on January 27, 2014 from the Empire Liquor Store Association in Albany, NY and the Northbrook Indemnity Company in Northbrook, IL.[33]

If this is the case, these contributions were received by the State Committee at a time when then-Senator Zeldin was also a registered state candidate and had not made a decision on whether to run for reelection to the state senate if he lost the June 24, 2014 Republican primary election for Congress. In fact, the prospect of losing the Republican primary was a real possibility, as then-Senator Zeldin faced stiff competition from wealthy attorney, George Demos, who put in millions of dollars of his own money and had the backing of former Governor George Pataki and former Mayor Rudolph Giuliani.[34] Mr. Zeldin also received significant pressure from some of the Republican establishment in Albany to remain in the state senate. In light such opposition to his candidacy, then-Senator Zeldin had left his options open.

With that said, it is factually inaccurate for OGC to conclude that then-Senator Zeldin "was no longer a state candidate" because he was likely to run for reelection if he lost the congressional primary. Likewise, the Complaint offers no evidence that then-Senator Zeldin was no longer a state senate candidate during this time period. In fact, the Complaint does not even touch on this issue. Rather, such speculation derived solely from OGC in the F&LA, presumably based off suppositions stemming from its pre-RTB investigation. Because then-Senator Zeldin was also a state candidate at the time of the alleged corporate contributions, he was permitted to accept

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[30] F&LA at 5.
[31] Complaint at 5.
[32] F&LA at 5.
[33] Zeldin for Senate, New York State Board of Elections Filer ID 154475, July 2014 Periodic Report – Schedule C Other Monetary.
[34] Rick Brand & Joan Gralla, *Lee Zeldin defeats George Demos in 1st Congressional District GOP primary*, NEWSDAY, June 25, 2014, *available at* http://www.newsday.com/long-island/turnout-light-in-gop-primary-in-1st-congressional-district-1.8554517.

them under the "state candidate" exception to 52 U.S.C. § 30125(e)(1)(B) cited in footnote 16 of the F&LA.[35]

II. Finding Reason to Believe Based on Allegations Manufactured by OGC and Unsworn Facts, to Which Respondents Did Not Have an Adequate Opportunity to Respond, is Inappropriate and Runs Counter to the Act.

As explained above, the Complaint in this matter did not contain any legal argument or provide any conclusive facts indicating that Congressman Zeldin and the State Committee "raised and spent nonfederal funds after Zeldin became a federal candidate,"[36] Instead, the F&LA and OGC's RTB recommendation concocted this claim based on information it appears to have discovered independently of the Complaint. This raises questions about the extent to which OGC, prior to a finding of RTB, may (if at all) gather outside information and then rely on it when making an RTB recommendation.

The Act and Commission regulations make clear the conditions that must be met before the Commission may investigate a complaint's allegations. The Act provides that a complaint "shall be in writing, signed, and sworn to by the person filing such complaint, shall be notarized, and shall be made under penalty of perjury ..."[37] Once the Commission receives a complaint, OGC reviews it for "substantial compliance with the technical requirements of 11 CFR § 111.4,"[38] and then "recommend[s] to the Commission whether or not it should find reason to believe[,] ... no reason to believe[,] ... or that the Commission otherwise [should] dismiss a complaint..."[39] The Commission may not entertain an RTB finding, let alone undertake an investigation, until the respondent has the opportunity to submit, in writing, reasons why the Commission should take no further action.[40]

The Act is clear that an investigation is to begin only after the Commission votes to find reason to believe, NOT before then:

> If the Commission, upon receiving a complaint under paragraph (1) or on the basis of information ascertained in the normal course of carrying out its supervisory responsibilities, determines, by an affirmative vote of four of its members, that it has reason to believe that a person has committed, or is about to commit, a violation of this Act... the Commission shall, through its chairman or vice chairman, notify the person of the alleged violation. Such notification shall set forth the factual basis for such alleged violation. The Commission shall make an investigation of such

[35] F&LA, n. 16.
[36] F&LA at 3.
[37] 52 U.S.C. § 30109(a)(1).
[38] 11 CFR § 111.5(a).
[39] 11 CFR § 111.7.
[40] 52 U.S.C. § 30109(a)(1); 11 CFR § 111.6(a).

> alleged violation, which may include a field investigation or audit, in accordance with the provisions of this section.[41]

As the Perkins Coie political law group explained in comments filed with the Commission in 2013, this is by design: "Congress wrote FECA to place limits on what the Commission may do at the pre-reason to believe, or pre-RTB phase."[42]

Even assuming arguendo that certain limited reviews of publicly available materials for the purpose of verifying information in complaints are permissible actions done in "the normal course of carrying out [the Commission's] supervisory responsibilities,"[43] at an absolute minimum, any facts or allegations unearthed during such reviews that OGC uses to support RTB recommendations must be provided to respondents, as well as an explanation of their relation to the underlying complaint. This will ensure that respondents have a full and fair opportunity to respond to any new facts or allegations. Such an opportunity was not afforded to Congressman Zeldin and ZFS in this matter; this failure undermines the command that "[t]he Commission shall not take any action, or make any finding, against a respondent... unless it has considered [its] response."[44] Importantly, this "supervisory responsibilities" provision is narrow, as the Commission has no "roving statutory functions" to "gather and compile information and to conduct periodic investigations."[45] Instead, this statutory prong permits the Commission to review only information included in "other sworn complaints" or from evidence of actual "wrongdoing" learned in its routine review of reporting data.[46] Furthermore, as the D.C. Circuit has made clear, "mere 'official curiosity' will not suffice as the basis for FEC investigations."[47]

OGC's appropriation of the Commission's power to decide to investigate runs counter to the Act in other ways. For example, the Act establishes two distinct methods by which an enforcement proceeding may be initiated: (1) by a sworn complaint; or (2) as stated above, "on the basis of information ascertained in the normal course of its supervisory responsibilities..."[48] In contrast with the Act, over the years OGC has created what is essentially a hybrid between these two methods, where they essentially conduct their own ad hoc review and supplement the complaint, while at the same time avoiding the Act's due process protections afforded to respondents in complaint-generated matters.[49]

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[41] 52 U.S.C. § 30109(a)(2); *see also* 11 CFR § 111.10(a).
[42] Comment from Perkins Coie, LLP Political Law Group, on Request for Comment on Enforcement Process (April 19, 2013), *available at* http://www.fec.gov/law/policy/enforcement/2013/perkinscoie.pdf. *See also* MUR 6540 (Rick Santorum for President), Statement of Reasons of Vice Chairman Donald F. McGahn and Commissioner Caroline C. Hunter; MUR 6576 (Wright McLeod for Congress), Statement of Reasons of Vice Chairman Donald F. McGahn.
[43] 52 U.S.C. § 30109(a)(2); 11 CFR §§ 111.3, 111.8(a).
[44] 11 CFR § 111.6(b).
[45] *FEC v. Machinists Non-Partisan Political League*, 655 F.2d 380, 387 (D.C. Cir. 1981) ("*Machinists*").
[46] *In re Fed. Election Campaign Act Litig.*, 474 F. Supp. 1044, 1046 (D.D.C. 1979); *see also FEC v. Nat. Republican Senatorial Comm.*, 877 F. Supp. 15, 18 (D.D.C. 1995) ("NRSC").
[47] *See Machinists*, 655 F.2d at 388.
[48] 52 U.S.C. § 30109(a)(2); *see also* 11 CFR § 111.10(a).
[49] MUR 6540 (Rick Santorum for President), Statement of Reasons of Vice Chairman Donald F. McGahn and Commissioner Caroline C. Hunter, at 10-11.

As explained above, in complaint-generated matters, the complaint must be under oath and notarized, protecting respondents from anonymous accusations. Commission regulations further require that complainants specify whether what is alleged is based on personal knowledge, or merely information or belief. Unsworn complaints are considered defective and will be returned to the complainant. By contrast, state campaign finance reports that are not included in the complaint but which are used in OGC's RTB recommendation are not under oath, and yet are somehow deemed by OGC to be a part of a complaint-generated matter.[50]

In this matter, the Complaint made two explicit allegations: (1) that "the State Committee paid for coordinated communications that constituted illegal transfers" to the Federal Committee[51]; and, (2) that "Respondents made illegal transfers from the State Committee to the Federal Committee in the form of reciprocal contributions."[52] The Complainant included evidence to prove solely those allegations, such as referencing payments for journal articles and citing thirty-five (35) disbursements, totaling $58,135, made by the State Committee to a number of state and local conservative and Republican organizations to prove her reciprocal contributions claim.[53] However, the Commission clearly did not find those arguments compelling because they were emphatically dismissed. OGC's inquiry should have ended there—within the four corners of the complaint. Instead, OGC chose to engage in a pre-RTB investigation, where not only did it explore state campaign finance reports not cited in the Complaint, but it expanded the time period of the inquiry to include alleged activity extending well past Congressman Zeldin's "eventual election on November 4, 2014."[54] In doing so, OGC impermissibly stepped into the shoes of the Complainant, resulting in additional speculative and unsworn claims, including that the State Committee "contributed or transferred $99,655" to state and local political committees, and that "some portion of the $99,655...were funds that did not comply with the Act's amount limitations and source prohibitions.,"[55] and that the State Committee "accepted $1,000 in impermissible [corporate] contributions."[56]

In short, there was simply no way for Respondents to adequately respond to OGC's additional unsworn claims stemming from its pre-RTB investigation because these claims were not asserted in the Complaint. Such extra-statutory practices by OGC fly in the face of fairness and due process and run counter the Act.

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[50] *Id.* at 11.
[51] Complaint at 3.
[52] Complaint at 6.
[53] *See* Complaint, Attachment A.
[54] Complaint at 2.
[55] F&LA at 4.
[56] F&LA at 5.

III. The Commission's Factual and Legal Analysis Impermissibly Shifts the Burden of Proof to Respondents to Prove They Did Not Violate the Act.

Despite the inadequacy of the allegations and evidence actually presented in the Complaint, OGC nevertheless recommended that the Commission find RTB based on a combination of speculation and burden shifting. This is the same type of burden shifting urged by the Complaint, and OGC evidently took the bait. As explained above, the Complainant surmises that impermissible funds were used by the State Committee to make contributions to the state and local committees and attempts to shift the burden to Respondents by conditioning its allegations and asserting that they are true "unless...the State Committee had sufficient federally permissible funds on hand to make the contributions."[57] Likewise, the F&LA resorts to shifting the burden to Respondents to prove a negative, stating that "we do not have information that the State Committee used such an accounting method and thus only used federally permissible funds to make the contributions."[58]

Such burden shifting tactics are not permitted under the Act and should not be employed by OGC or the Commission. In reality, not once does the Complaint make the allegation or provide hard evidence that the State Committee did not have sufficient federally permissible funds in its account to cover the contributions cited in the Complaint. It simply said, "unless...the State Committee had sufficient federally permissible funds..."[59] Apparently reading the foregoing line as affirmative evidence that Respondents did not have enough federally permissible funds or an adequate accounting method in place, OGC treated such speculation as fact when it stated in the F&LA, "we do not have information that the State Committee used such an accounting method and thus only used federally permissible funds to make the contributions,"[60] and then proceeded to recommend RTB for violating 52 U.S.C. 30125(e)(1)(B) based on these false assumptions.

In reality, the State Committee had more than enough permissible funds in its account to make the contributions to state and local committees cited in the Complaint. Although its calculations are off, OGC essentially concedes this fact in footnote 14 of the F&LA, where is concludes that "39% of the State Committee's available funds in this time period consisted of demonstrably impermissible funds."[61] Just taking into account 2013 activity, this means that OGC is admitting that neither the Complaint, nor OGC through its pre-RTB investigation, uncovered any evidence to prove that 61% of contributions received by the State Committee, worth over $155,000, consisted of demonstrably impermissible nonfederal funds. This amount was surely enough to cover the state and local contributions at issue.

[57] Complaint at 5.
[58] F&LA at 5.
[59] Complaint at 5.
[60] F&LA at 5.
[61] F&LA, n. 14.

The Commission has made clear that such burden shifting and speculation is insufficient and does not establish that there is a reason to believe a violation occurred.[62] Due process and fundamental fairness dictate that **the burden must not shift to a respondent merely because a complaint is filed with the Commission**.[63] Both the Complaint and the F&LA are guilty of shifting the burden to the Respondents through the use of innuendo and conjecture. Such practices defy due process and must not be allowed to stand. As former Chairman Wold and Commissioners Mason and Thomas proffered in a 2000 Statement of Reasons, "Before the Commission finds RTB that FECA violations occurred based on nothing more than insufficiently vigorous denials to mere conjecture, the regulated community should be given sufficient notice that such a lilliputian RTB threshold is being applied by the Commission."[64]

IV. Conclusion

In light of the foregoing, we respectfully request that the Commission rescind its RTB finding and dismiss this matter. In the alternative, and at a minimum, we request that the Commission withdraw its RTB finding and direct OGC to provide revised recommendations and analysis to the Commission based solely on the allegations and facts within the four corners of the complaint—not those stemming from OGC's illegitimate pre-RTB investigation.

Respectfully submitted,

James E. Tyrrell III
Counsel to Congressman Lee Zeldin & Zeldin for Senate

[62] MUR 5467 (Michael Moore), First General Counsel's Report at 5 ("Purely speculative charges, especially when accompanied by a direct refutation, do not form the adequate basis to find reason to believe that a violation of [the Act] has occurred." (quoting MUR 4960 Statement of Reasons at 3)).
[63] *See* MUR 4850 (Deloitte & Touche, LLP), Statement of Reasons of Chairman Daryl R. Wold and Commissioners David M. Mason and Scott E. Thomas, at 2 (rejecting OGC's recommendation to find reason to believe because the respondent did not specifically deny conclusory allegations, and holding that "[a] mere conclusory allegation without any supporting evidence does not shift the burden of proof to the respondents.")
[64] *Id.* at 1-2.