

1 **FEDERAL ELECTION COMMISSION**

2 **FIRST GENERAL COUNSEL'S REPORT**

3 **Pre-MUR 619<sup>1</sup>**

4 DATE RECEIVED: 12/03/2018

5 DATE OF NOTIFICATION: 12/12/2018

6 DATE SUPPLEMENTAL SUBMISSIONS

7 RECEIVED: 12/31/2018; 05/22/2019

8 DATE ACTIVATED: 05/31/2019

9 EXPIRATION OF SOL: 06/28/2023 – 11/30/2023

10 ELECTION CYCLE: 2018

11 **SOURCE:**

12 *Sua Sponte* Submission

13 **RESPONDENTS:**

14 Vincent Ross Spano

15 Ross Spano for Congress and Robert Phillips, III

16 in his official capacity as treasurer

17 Karen L. Hunt

18 Cary Carreno

19 **MUR 7629<sup>2</sup>**

20 DATE RECEIVED: 8/05/2019

21 DATE OF NOTIFICATION: 08/08/2019

22 LAST RESPONSE RECEIVED: 08/20/2019

23 DATE ACTIVATED: 08/22/2019

24 EXPIRATION OF SOL: 06/28/2023 – 11/30/2023

25 ELECTION CYCLE: 2018

26 **COMPLAINANT:**

27 Jan Barrow

28 **RESPONDENTS:**

29 Vincent Ross Spano

30 Ross Spano for Congress and Robert Phillips, III

31 in his official capacity as treasurer

32 Cary Carreno

33 Karen L. Hunt

34 <sup>1</sup> See *Sua Sponte* Submission, Pre-MUR 619 (Spano *et al.*) (Dec. 3, 2018). Respondents later provided supplemental materials, including sworn affidavits from Spano, Carreno and Hunt. See Supplemental Submission, Pre-MUR 619 (Spano *et al.*) (Dec. 31, 2018) (“Supplemental Submission”); Supplemental Submission, Pre-MUR 619 (Spano *et al.*) (May 22, 2019) (including sworn affidavits of Ross Spano (“Spano Aff.”), Cary Carreno (“Carreno Aff.”) and Karen L. Hunt (“Hunt Aff.”) (also referred to collectively as “Sworn Affidavits”); Ross Spano Sworn Affidavit, Pre-MUR 619 (Spano *et al.*) (July 3, 2019) (“Spano Aff. #2).

35 <sup>2</sup> See Compl., MUR 7629 (Ross Spano *et al.*) (Aug. 5, 2019).

1 **RELEVANT STATUTES** 52 U.S.C. § 30101(8)(B)(vii)  
 2 **AND REGULATIONS:** 52 U.S.C. § 30104(b)  
 3 52 U.S.C. § 30116(a), (f)  
 4 52 U.S.C. § 30122  
 5 11 C.F.R. § 100.52(b)(3)  
 6 11 C.F.R. § 100.82(a), (c)  
 7 11 C.F.R. § 103.3(b)(3)  
 8 11 C.F.R. § 110.1  
 9 11 C.F.R. § 110.4

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 11 **INTERNAL REPORTS CHECKED:** FEC Disclosure Reports  
 12 FEC Contributor Database  
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14 **FEDERAL AGENCIES CHECKED:**  
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16 **I. INTRODUCTION**  
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18 Vincent Ross Spano, a candidate for Florida 15th Congressional District (and now a U.S.  
 19 Congressional Representative) received \$180,000 in unsecured loans from personal friends Cary  
 20 Carreno and Karen L. Hunt from June to October 2018 during the period he was campaigning for  
 21 office. Soon after receiving the funds, Spano transferred \$164,500 of the amount to his principal  
 22 campaign committee, Spano for Congress and Robert Phillips, III, in his official capacity as  
 23 treasurer (the "Committee") in what was reported as loans from the candidate's personal funds.

24 During this time period, Spano failed to timely file his U.S. House Committee on Ethics  
 25 Financial Disclosure Statement ("FDS"), which should have revealed Carreno and Hunt as the  
 26 actual source of these funds. Spano's belated filing of his FDS just before the 2016 general  
 27 election, which disclosed three of the four Carreno and Hunt loans, triggered media reports  
 28 regarding his possibly illegal conduct. Respondents subsequently made a *sua sponte* submission  
 29 to the Commission in order to resolve possible violations of the Federal Election Campaign Act

1 of 1971, as amended (“the” Act).<sup>3</sup> The Complaint in MUR 7629 was filed after Respondents’  
2 *sua sponte* submission, and alleged that the Committee’s failure to actually refund or disgorge  
3 the funds derived from Carreno and Hunt’s loans constitute further violations of the Act.

4 We recommend that the Commission: (1) open a matter under review in connection with  
5 Pre-MUR 619 and merge it into MUR 7629; (2) find reason to believe that Cary Carreno and  
6 Karen L. Hunt made excessive contributions to Ross Spano and the Committee in violation of  
7 52 U.S.C. § 30116(a); (3) find reason to believe that Ross Spano and the Committee accepted  
8 excessive contributions in violation of 52 U.S.C. § 30116(f); (4) find reason to believe that the  
9 Committee misreported the source of the funds in violation of 52 U.S.C. § 30104(b)(3); (5) find  
10 reason to believe that the Committee failed to timely refund the excessive contributions in  
11 violation of 11 C.F.R. § 103.3(b)(3); (6) authorize pre-probable cause conciliation; and  
12 (7) approve the proposed conciliation agreements with (a) Spano and the Committee, (b) Cary  
13 Carreno, and (c) Karen L. Hunt.

## 14 **II. FACTUAL BACKGROUND**

### 15 **A. Carreno and Hunt loan \$180,000 to Spano**

16 Spano, a licensed attorney and a sitting member of the Florida House of Representatives,  
17 announced his 2018 Congressional candidacy in April 2018.<sup>4</sup> Spano for Congress was Spano’s

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<sup>3</sup> Counsel for Respondents has indicated that there is an ongoing House Ethics Committee investigation regarding the Carreno and Hunt loans. The news of the ongoing ethics investigation has been noted by the media. See <https://thehill.com/homenews/house/463722-house-ethics-committee-reviewing-two-gop-lawmakers-over-campaign-finance> (article last accessed on Oct. 15, 2019); <https://www.rollcall.com/news/congress/rep-tlaib-huizenga-spano-under-investigation-by-house-ethics-committee> (article last accessed on Oct. 15, 2019). If this inquiry results in the disclosure of further information, we will make additional recommendations as appropriate.

<sup>4</sup> Statement of Candidacy, V. Ross Spano (Apr. 18, 2018); see also, <http://sunshinestatenews.com/story/ross-spano-jumps-attorney-general-race>; <https://floridapolitics.com/archives/261741-ross-spano-exits-ag-race-files-for-cd-15> (article last accessed on Oct. 15, 2019).

1 principal campaign committee.<sup>5</sup> Carreno and Hunt state that they are personal friends of Spano  
 2 who contributed to Spano's 2018 congressional campaign.<sup>6</sup>

3 Following discussions about Spano's personal financial issues and campaign fundraising  
 4 problems, Carreno and Hunt loaned Spano the following amounts:

<u>Date</u>	<u>Lender</u>	<u>Recipient</u>	<u>Amount</u>
6/28/2018	Cary Carreno	Ross Spano	\$35,000
8/9/2018	Karen L. Hunt	Ross Spano	\$35,000
9/30/2018	Karen L. Hunt	Ross Spano	\$35,000
10/29/2018	Cary Carreno	Ross Spano	\$75,000
		<b>TOTAL</b>	<b>\$180,000</b>

5 Spano states that he had a limited understanding of federal campaign finance laws and  
 6 consulted with his campaign consultant, Brock Mikosky, about accepting these personal loans.<sup>7</sup>

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<sup>5</sup> Statement of Organization, Ross Spano for Congress (Apr. 18, 2018).

<sup>6</sup> The Committee's disclosure reports indicate that Carreno made a primary election contribution of \$2,700 on May 10, 2018, and a \$1,700 general election contribution on the same day. *See* 2018 July Quarterly Report, Ross Spano for Congress (July 15, 2018). Hunt also made a \$1,000 primary election contribution on June 22, 2018, and another \$1,000 general election contribution on October 1, 2018. *See* 2018 July Quarterly Report; 2018 October Quarterly Report, Ross Spano for Congress (Oct. 15, 2018). A review of Florida's contribution database also indicates that Carreno made a total of \$5,000 in contributions to Spano's state campaigns in 2012 (\$1,000), 2014 (\$1,000) and 2018 (\$3,000); and that Hunt made a total of \$1,500 in contributions to Spano's state campaigns in 2016 (500) and 2018 (\$1,000). *See* <https://dos.myflorida.com/elections>.

<sup>7</sup> Spano Aff. ¶¶ 11, 27. Spano's second sworn affidavit details his conversations with Mikosky about the loans and provides a copy of a text message exchange to support his claim that he and Mikosky discussed accepting personal loans from Carreno. Spano Aff. #2, Attach. (copy of text messages). The text message exchange asks Mikosky if it would be permissible for him to loan the Committee money in the primary election, and use contributions from the general election to repay the candidate loan, and whether it would be permissible for Carreno to loan him money for the campaign and be repaid with general election contributions. *Id.*

The MUR 7629 Complaint references a statement from former Committee treasurer, Jamie Jodoin, who claims to have had no knowledge of the loans beforehand and denies that she advised Spano that the loans were permissible. *See* Compl. at 6. Although it appears that the Complainant inadvertently omitted the source for Jodoin's statement, the likely source for the information can be found at <https://www.tampabay.com/florida-politics/buzz/2018/12/01/ross-spano-acknowledges-possible-violation-of-campaign-finance-law/> (article last

1 Spano asserts that he believed a personal loan was permissible as long as the transaction was  
 2 “arms-length” and a “legitimate loan” with proper terms.<sup>8</sup> Spano states that he executed written  
 3 promissory notes for each loan, all of which required payment of a 5% interest rate.<sup>9</sup>

#### 4 **B. Spano Transfers Most of the Carreno and Hunt Funds to the Committee**

5 Spano immediately used the Carreno and Hunt funds to make \$164,5000 in candidate  
 6 loans to the Committee that were represented as being made from his personal funds.<sup>10</sup>  
 7

<u>Date</u>	<u>Election Cycle</u>	<u>Report</u>	<u>Source</u>	<u>Loan Amount</u>
6/30/2018	2018 Primary	July 2018 Quarterly	Personal funds	\$35,000 <sup>11</sup>
8/9/2018 <sup>12</sup>	2018 Primary	2018 Pre-Primary	Personal funds	\$32,000
9/30/2018	2018 General	October 2018 Quarterly	Personal funds	\$27,500
10/31/2018	2018 General	Post-General	Personal funds	\$70,000
			<b>TOTAL</b>	<b>\$164,500</b>

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accessed October 15, 2019). The article speaks of Jodoin being interviewed about the loan issue and contains the same quotation as that found in the Complaint. *Id.*; see also Compl. at 6. Jodoin stated that when Spano loaned money to the campaign, “I was given checks and the only information I received was that they were from his personal funds.” *Id.*

<sup>8</sup> *Id.* ¶¶ 11, 13-14, 27. Carreno and Hunt similarly state that they believed that the loans were permissible and would not constitute excessive contributions. Carreno Aff. ¶ 8; Hunt Aff. ¶ 7.

<sup>9</sup> Spano Aff. ¶18.

<sup>10</sup> See 2018 July Quarterly Report; 2018 Pre-Primary Report; 2018 October Quarterly Report; 2018 Post-General Report, Ross Spano for Congress (Jan. 31, 2019) (“Post-General Report”). The Submission states that Spano used the remaining \$15,500 in loan proceeds to cover business and personal expenses. Spano Aff. ¶¶ 15-17.

<sup>11</sup> The submission states that Spano’s loan to the Committee on June 30, 2018, was for \$35,000 and not \$27,500 as originally indicated in the initial Submission. Suppl. Submission #2 at 1. The true amount was accurately reflected on the Committee’s disclosure report. See 2018 July Quarterly Report.

<sup>12</sup> While the 2018 Pre-Primary Report notes that the candidate loan was made on August 8, 2018, which would have been a day before the loan was made on August 9, 2018, counsel for Respondents has indicated that Spano inadvertently put the incorrect date on the check to the Committee. Counsel represents that the loan date should be reflected as August 9<sup>th</sup> instead of August 8<sup>th</sup>.

1           On three instances, Spano states that he used a portion (\$15,500) of the \$180,000 loan  
2 proceeds to pay business and other personal expenses: \$3,000 of the \$35,000 loan amount  
3 (August 9<sup>th</sup>); \$7,500 of the \$35,000 loan amount (September 30<sup>th</sup>), and \$5,000 of the \$75,000  
4 loan amount (October 29<sup>th</sup>).

### 5           **C. Spano's Late Filing of 2018 FDS**

6           The U.S. House Committee on Ethics requires an individual who qualifies as a candidate  
7 during an election (even-numbered) year to file a FDS within 30 days of becoming a candidate or  
8 May 15 of that year, whichever is later.<sup>13</sup> The FDS must contain information regarding the  
9 financial interests of the candidate and spouse and children, if applicable, earned income, assets  
10 and unearned income, liabilities, gifts, and compensation in excess of \$5,000 from one source.<sup>14</sup>

11           The Committee was notified by the House Committee on Ethics in early spring 2018 of  
12 the requirement to file the financial report.<sup>15</sup> Spano claims that he passed the notice onto Brock  
13 Mikosky, his political consultant, to handle the FDS filing; and Mikosky assured him that he  
14 would request a filing extension which was completed on May 18, 2018.<sup>16</sup> Spano further states  
15 that he followed up with Mikosky twice about the FDS filing, once a "month or so" after the

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<sup>13</sup> See <https://ethics.house.gov/financial-disclosure/specific-disclosure-requirements>. There are two exceptions to this general rule: First, a qualifying candidate must file no later than 30 days before any election (including primaries) in which the individual is participating. *Id.* Thus, if the individual becomes a candidate on January 5th in an election year and the primary is on April 22nd, the report is due by March 23 (no later than 30 days before the election). *Id.* Second, if a candidate crosses the \$5,000 threshold within the 30-day period prior to an election, the candidate must file the statement immediately after he or she raises or spends more than \$5,000. *Id.* Candidates in a special election also follow this filing rule. *Id.*

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

<sup>15</sup> Spano Aff. #2 at ¶ 1.

<sup>16</sup> *Id.* ¶ 2. On May 18, 2018, Spano requested and was granted a sixty (60) day extension to file the FDS on July 17, 2018. See [http://clerk.house.gov/public\\_disc/financial-pdfs/2018/30004716.pdf](http://clerk.house.gov/public_disc/financial-pdfs/2018/30004716.pdf).

1 initial conversation and again in September 2018.<sup>17</sup> On both occasions, Mikosky allegedly  
2 informed him that the Committee had still not received a notice about the deadline for the FDS  
3 but that there were “no worries” and that he would make sure that they were still “in good  
4 standing.”<sup>18</sup> It appears that Spano may have believed that Mikosky was waiting to hear back  
5 about the extension request before providing the information necessary to complete the FDS and  
6 Mikosky failed to follow up on the extension request which resulted in the FDS not being filed  
7 until November 3, 2018. Spano states that Mikosky took responsibility for not filing the overdue  
8 statement, and paid the late filing fee.<sup>19</sup>

9 According to Spano, the issue of the unfiled FDS arose again on November 2, 2018, three  
10 days before the general election, when he was attending a “get-out-the-vote” event.<sup>20</sup> Prior to the  
11 event, Mikosky approached him to let him know that a reporter from a local newspaper was  
12 asking questions about why the FDS had not been filed.<sup>21</sup> On November 3, 2018, three days  
13 prior to the general election, then-candidate Spano filed his FDS with the Clerk of the U.S.  
14 House of Representatives which disclosed three of the four personal loans from Carreno and  
15 Hunt as liabilities with a value between \$50,001 and \$100,000.<sup>22</sup>

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<sup>17</sup> Spano Aff. #2 at ¶ 2.

<sup>18</sup> *Id.* ¶ 3.

<sup>19</sup> *Id.* ¶¶ 4, 5; *see also* E-mail from Elliot Berke, Esq. to Kimberly Hart, OGC (July 26, 2019) (copy of check covering the late filing fee for Spano’s 2018 FDS).

<sup>20</sup> *Id.* ¶ 4.

<sup>21</sup> *Id.*

<sup>22</sup> *See* Financial Disclosure Statement, V. Ross Spano (Nov. 3, 2018) (“FDS”) located at [http://clerk.house.gov/public\\_disc/financial-pdfs/2018/10023479.pdf](http://clerk.house.gov/public_disc/financial-pdfs/2018/10023479.pdf). The FDS does not appear to have disclosed the October 29, 2018, Carreno loan which would have increased Spano’s liabilities by an additional \$75,000.

1           **D.     Sua Sponte Submission and Complaint**

2           Beginning December 2, 2018, and thereafter, several newspapers published articles  
3 regarding Spano's potential violations of the Act by using the loan proceeds to make loans to  
4 Spano's Committee.<sup>23</sup> Spano states that this attention caused him to seek outside legal advice  
5 about the permissibility of the loans, and led to the filing of the *sua sponte* submission.<sup>24</sup> The  
6 Submission indicates that, upon learning of the potential unlawfulness of the loans, he consulted  
7 with legal counsel for the first time, terminated his prior accounting, compliance and consulting  
8 staff, and hired new staff to handle those tasks as a means of corrective action.<sup>25</sup>

9           On December 24, 2018, Spano repaid Carreno's loans with interest totaling \$106,432.56  
10 and the remaining amount of \$5,040.41 on December 28, 2018.<sup>26</sup> On December 28, 2018, Spano  
11 repaid Hunt's loans in full including 5% interest totaling \$71,063.38.<sup>27</sup> Counsel has confirmed  
12 that Spano secured a loan from CenterState Bank to repay the Carreno and Hunt loans as  
13 reflected on Spano's 2019 FDS.<sup>28</sup> On August 5, 2019, a Complaint was filed alleging violations

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<sup>23</sup> See e.g., <https://floridapolitics.com/archives/282395-ross-spano-admits-he-used-personal-loans-for-campaign>; <https://www.theledger.com/news/20181202/newly-elected-republican-us-rep-ross-spano-acknowledges-possible-campaign-finance-violations>; (article last accessed on Oct. 15, 2019); <http://www.tampabay.com/florida-politics/buzz/2018/12/01/ross-spano-acknowledges-possible-violation-of-campaign-finance-law/> (article last accessed on Oct. 15, 2019); <https://thehill.com/homenews/campaign/419377-incoming-gop-lawmaker-says-he-may-have-violated-campaign-finance-law> (article last accessed on Oct. 15, 2019). The articles do not specifically state the manner by which they came into possession of the actual submission.

<sup>24</sup> Spano Aff. #1, ¶ 22.

<sup>25</sup> Submission at 2.

<sup>26</sup> *Id.* ¶ 25.

<sup>27</sup> *Id.* ¶ 26.

<sup>28</sup> See Financial Disclosure Statement, V. Ross Spano (May 15, 2019) ("FDS #2") located at [http://clerk.house.gov/public\\_disc/financial-pdfs/2018/30004716.pdf](http://clerk.house.gov/public_disc/financial-pdfs/2018/30004716.pdf). Spano reported a new liability in the form of a promissory note dated December 28, 2018, with CenterState Bank for an amount ranging from \$100,000 to \$250,001. *Id.* The timing of the promissory note corresponds to the amount of the loans as well as the time period in which the loans repayments were made. *Id.*



1 of the Act based on the same set of facts contained in the *sua sponte* submission.<sup>29</sup> In addition,  
2 the Complaint alleged that the Committee's failure to refund or disgorge the funds it received  
3 from Carreno and Hunt constitutes further violations of the Act.

4 On September 20, 2019, the Committee refunded \$110,000 of the \$164,500 used by  
5 Spano to make the candidate loans.<sup>30</sup> However, the counsel for the Committee has indicated that  
6 it has not yet refunded the remaining \$54,500 in candidate loans.<sup>31</sup>

### 7 **III. LEGAL ANALYSIS**

#### 8 **A. There is Reason to Believe that the Carreno and Hunt loans** 9 **were excessive contributions to Spano and the Committee.**

10 A contribution is any gift, subscription, loan, advance, or deposit of money or anything of  
11 value made by any person for the purpose of influencing any election for Federal office.<sup>32</sup> Under  
12 the Act, an individual may not make a contribution to a candidate with respect to any election in  
13 excess of the legal limit, which was \$2,700 per election during the 2017-2018 election cycle.<sup>33</sup>  
14 Any candidate who receives a contribution as defined at 11 C.F.R. part 100, subparts B and C,  
15 obtains any loan, or makes any disbursement, in connection with his or her campaign shall be  
16 considered as having received such contribution, obtained such loan or made such disbursement  
17 as an agent of his or her authorized committee.<sup>34</sup> In addition, the Act and Commission  
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<sup>29</sup> See Compl. at 7-9.

<sup>30</sup> See 2019 October Quarterly Report, Spano for Congress (Oct. 15, 2019).

<sup>31</sup> See E-mail from Elliot Berke, Esq. to Kimberly Hart, OGC (Oct. 25, 2019, 9:42 am).

<sup>32</sup> 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.52(a).

<sup>33</sup> See *Id.* § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1). Further, a candidate committee must report the identity of any person who makes a contribution to the committee during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of \$200 within the election cycle. 52 U.S.C. § 30104(b)(3).

<sup>34</sup> 52 U.S.C. § 30102(e)(2); 11 C.F.R. §§ 101.2, 102.8(a).

1 regulations further provide that no person may make, and no candidate or candidate's authorized  
2 political committee shall knowingly accept, any contribution that violates the contribution limits  
3 set forth in section 30116.<sup>35</sup>

4 A "loan" includes a guarantee, endorsement, and any other form of security.<sup>36</sup> A loan  
5 that exceeds the contribution limits, or otherwise violates 52 U.S.C. §§ 30116 or 30118, is  
6 unlawful, whether or not it is repaid.<sup>37</sup> A loan to a political committee or a candidate by a  
7 commercial bank is exempt from the definition of contribution, if such loan is made in  
8 accordance with applicable law and in the ordinary course of business.<sup>38</sup>

9 In the present matter, Spano did not use a commercial lender to obtain the loans in  
10 question, but instead took loans from personal friends.<sup>39</sup> Because the Carreno and Hunt loans  
11 were not made by a commercial lending institution in the ordinary course of business, they are

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<sup>35</sup> 52 U.S.C. § 30116(f).

<sup>36</sup> 11 C.F.R. § 100.52(b); *see also* 52 U.S.C. § 30101(8)(B)(vii). Each endorser or guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written agreement. 11 C.F.R. §§ 100.52(b)(3), 100.82(c).

<sup>37</sup> *Id.* § 100.52(b).

<sup>38</sup> *Id.* § 100.82(a). A loan only will be deemed to be made in the ordinary course of business if it: "(1) [b]ears the usual and customary interest rate of the lending institution for the category of loan involved; (2) [i]s made on a basis that assures repayment; (3) [i]s evidenced by a written instrument; and (4) [i]s subject to a due date or amortization schedule." A loan is considered "made on a basis that assures repayment" if it is obtained using a perfected security interest in collateral owned by the candidate, the fair market value of the collateral is equal to or greater than the loan amount, and the candidate provides documentation to show that the lending institution has a perfected security interest in the collateral. *Id.*

<sup>39</sup> Even if Spano could satisfy the "commercial lender" requirement, the loans do not satisfy a key requirement of 100.82(a) because they were not made on a "basis that reassures repayment." *Id.* § 100.82(e). For purposes of the section 100.82(a) analysis, it is irrelevant whether the loans meet the remaining requirements of 100.82(a) because they were not obtained from a commercial lender and were not made on the basis that reassures repayment. *Id.* In order for the loans to satisfy this element, they must have been obtained using a perfected security interest in collateral owned by the candidate that meets the requirements of the regulation. *Id.* The promissory notes contain no information suggesting any perfected security interest for any of the loans. *See* Suppl. Submission, Attach. (copies of promissory notes).

1 not exempt from the definition of a “contribution.” As a result, Carreno and Hunt made  
 2 excessive contributions to Spano and the Committee.<sup>40</sup>

3 The Act and Commission regulations allow candidates for federal office to make  
 4 unlimited expenditures, including contributions or loans to their principal campaign committees,  
 5 as long as such expenditures, contributions or loans are made from their own “personal funds.”<sup>41</sup>  
 6 Although the Committee reported receiving \$164,500 in candidate loans, these funds came from  
 7 Carreno and Hunt, rather than from Spano’s personal funds.

8 We also conclude that the \$15,500 loaned to Spano by Carreno and Hunt that Spano used  
 9 to pay for expenses related to his law practice and certain other personal expenses, also constitute  
 10 excessive contributions. The Commission's regulations provide that a third party's payment of a  
 11 candidate's personal expense shall be deemed a contribution “unless the payment would have  
 12 been made irrespective of the candidacy.”<sup>42</sup> In this instance, both contributors have stated in

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<sup>40</sup> The Commission has previously sought or found reason to believe in similar situations involving a candidate’s acceptance of personal loans. *See, e.g.*, MUR 7437 (Bryce for Congress) (OGC recommended reason to believe findings for violations of sections 30116 and 30104 where an unreported personal loan to a candidate constituted the making and receiving of an excessive loan to the Committee); MURs 7001, 7002, 7003, 7009 and RR 16L-09 (Ted Cruz) (Commission found reason to believe that the Committee failed to properly report \$1,064,000 in loans made to the committee and dismissed allegations that Cruz’ wife made and the committee accepted excessive contributions); MUR 6417 (Huffman) (Commission found reason to believe that candidate and committee violated the Act by accepting excessive contributions in the form of loans from the candidate’s wife, failing to report the proper source of the loan, and failing to file the proper C-1 disclosure report, and that the candidate’s wife violated the Act by accepting excessive contributions).

<sup>41</sup> 11 C.F.R. §§ 110.10, 100.33. “Personal funds” include (1) all assets in which a candidate has legal title or an equitable interest, as well as salary and other earned income from *bona fide* employment;(2) dividends and proceeds from the sale of the candidate’s stocks or other investments;(3) bequests to the candidate;(4) income from trusts established before candidacy;(5) income from trusts established by bequest after candidacy of which the candidate is the beneficiary;(6) gifts of a personal nature which had been customarily received prior to candidacy; and (7) proceeds from lotteries and similar legal games of chance. 52 U.S.C. § 30101(26); 11 C.F.R. § 100.33.

<sup>42</sup> 11 C.F.R. § 113.1(g)(6); *see also* Explanation and Justification, Third Party Payments of Personal Use Expenses, 60 Fed. Reg. 7862, 7871 (Feb. 9, 1995) (“If a third party pays for the candidate's personal expenses, but would not ordinarily have done so if that candidate were not running for office, the third party is effectively making the payment for the purpose of assisting that candidacy.”). *See, e.g.*, Moran SOR at 4; Clinton SOR at 3. The other factors noted in the analysis were: (1) whether receipt of funds freed up other funds of the candidate for campaign purposes; and (2) whether the candidate would have more time to spend on the campaign instead of pursuing their usual employment. *Id.*

1 their affidavits that their motivation in making the loans was to support Spano's candidacy.<sup>43</sup>  
2 Carreno acknowledged that he understood Spano's "focus on his campaign" had caused his  
3 personal finances to "suffer" and also "took away from his law practice," suggesting that even if  
4 he knew Spano intended to use part of the loan for non-campaign expenses, it was to replace  
5 personal income lost to campaigning.<sup>44</sup> Hunt, in her affidavit, states that she did not know if "all  
6 funds were to be used for the campaign or if some were to be used for personal needs."<sup>45</sup>  
7 Accordingly, the \$15,500 in funds loaned to Spano that were used for business and personal  
8 expenses are contributions.

9 We recommend that the Commission find reason to believe that Cary Carreno<sup>46</sup> and  
10 Karen L. Hunt<sup>47</sup> violated 52 U.S.C. § 30116(a) by making excessive contributions, and that  
11 Vincent Ross Spano and Ross Spano for Congress and Robert Phillips, III in his official capacity  
12 as treasurer, violated 52 U.S.C. § 30116(f) by knowingly accepting excessive contributions. We  
13 also recommend that the Commission find reason to believe that Ross Spano for Congress and  
14 Robert Phillips, III in his official capacity as treasurer violated 52 U.S.C. § 30104(b)(3)(A) and

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<sup>43</sup> Carreno Aff. ¶ 6; Hunt Aff. ¶ 4.

<sup>44</sup> Carreno Aff. ¶ 6. Spano and Carreno have claimed that, due to their lengthy personal friendship, both have loaned each other money over the years, but neither one has presented information to confirm the previous lending history, or claimed that these loans would have been made irregardless of Spano's candidacy. *See* Spano Aff. #1 ¶ 3; Carreno Aff. ¶ 4.

<sup>45</sup> *Id.*

<sup>46</sup> Carreno made the maximum \$2,700 contribution to Spano's 2018 primary election campaign and also contributed \$1,700 to Spano's 2018 general election campaign, cycle which means he could have contributed an additional \$1,000 contribution. As a result only \$109,000 of his \$110,000 in loans were excessive contributions.

<sup>47</sup> Hunt contributed \$1,000 towards Spano's 2018 primary election campaign and another \$1,000 towards Spano's 2018 general election campaign which means she could have contributed an additional \$1,700 per election cycle, or a total of \$3,400. As a result only \$66,600 of her \$70,000 in loans to Spano were excessive contributions.

1 11 C.F.R. § 104.3(a)(3)(vii)(B) by misreporting that the funds received from Carreno and Hunt  
 2 were a loan from Spano's personal funds.<sup>48</sup>

3 **B. There is Reason to Believe that the Committee violated the Act by**  
 4 **failing to timely refund or disgorge the Carreno and Hunt contributions.**

5  
 6 The Complaint alleges that Spano and the Committee failed to timely refund and/or  
 7 disgorge the \$180,000 in excessive contributions that Spano received from the Carreno and Hunt  
 8 loans. In addition to the provisions of the Act that prohibit excessive contributions and  
 9 contributions in the name of another, section 103.3(b)(3) of the Commission regulations provides  
 10 that a campaign committee's treasurer is "responsible for examining all contributions received  
 11 for evidence of illegality" and for determining whether aggregate contributions from the same  
 12 contributor exceeds federal limits or violates source prohibitions imposed under federal law.<sup>49</sup> If  
 13 a treasurer determines – when the committee receives and deposits a contribution – that it does  
 14 not appear to violate federal contribution limits and source prohibitions, but "later discovers that  
 15 it is illegal based on new evidence not available to the committee at the time of the receipt and  
 16 deposit," the treasurer must refund the contribution to the contributor (if their identity is known)  
 17 no later than sixty (60) days after discovering its illegality."<sup>50</sup>

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<sup>48</sup> Based on the facts of this matter, including the misreporting of Spano as the source of the funds to make the candidate loans, Carreno and Hunt could be viewed as having made contributions in the name of another. However, given that Carreno, Hunt and Spano all claim to have been unaware of the unlawfulness of making personal loans funds to Spano for the purpose of supporting his campaign committee and the fact that the loans were reported, even if belatedly; we do not believe that also pursuing this violation as a contribution in the name of another is necessary under these circumstances.

<sup>49</sup> 11 C.F.R. § 103.3(b)(2).

<sup>50</sup> *Id.* § 103.3(b)(3). The provision also states that "if the political committee does not have sufficient funds to refund the contribution at the time the illegality was discovered, the political committee shall make the refund from the next funds it receives." *Id.*

1           The Committee was aware of the impermissibility of the Carreno and Hunt loans no later  
2 than December 3, 2018, the date on which it filed its *sua sponte* submission. Accordingly, the  
3 Committee was required to refund or disgorge the funds by no later than January 3, 2019.<sup>51</sup>  
4 Although Spano repaid Carreno and Hunt personal loans in December 2018, the Committee has  
5 only refunded \$110,000 of the \$164,500 in excessive contributions as of October 25, 2019, over  
6 nine months after the time proscribed by the Commission regulations. Accordingly, we  
7 recommend that Ross Spano for Congress and Robert Phillips, III violated 11 C.F.R.  
8 § 103.3(b)(3) by failing to timely refund the excessive contributions.

9           **C. Under the circumstances, the Commission should make non-knowing and**  
10           **willful findings in this matter.**

11  
12           The Act prescribes additional monetary penalties for violations that are knowing and  
13 willful.<sup>52</sup> A violation of the Act is knowing and willful if the “acts were committed with full  
14 knowledge of all the relevant facts and a recognition that the action is prohibited by law.”<sup>53</sup> This  
15 does not require proving knowledge of the specific statute or regulation the respondent allegedly  
16 violated.<sup>54</sup> Instead, it is sufficient to demonstrate that a respondent “acted voluntarily and was

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<sup>51</sup> Spano repaid in full the \$180,000 in Carreno and Hunt loans between December 24 and December 28, 2018, which would have also included the \$15,500 of those funds used by Spano to cover business and personal expenses (that were not deposited into the Committee’s account). We believe that the repayment of the loans should be viewed as a refund, albeit untimely, of the excessive contributions. Since the repayment of the loans took place within the 30 day time period from when the respondents became aware of the unlawfulness of the contributions and we have already recommended reason-to-believe findings as to the making and receipt of the total \$180,000 in excessive contributions, we make no additional recommendations as to the \$15,500 in excessive contributions received and used by Spano.

<sup>52</sup> 52 U.S.C. § 30109(a)(5)(B), (d).

<sup>53</sup> 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

<sup>54</sup> *United States v. Danielczyk*, 917 F. Supp. 2d 573, 579 (E.D. Va. 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, government needs to show only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)).

1 aware that his conduct was unlawful.”<sup>55</sup> This may be shown by circumstantial evidence from  
2 which the respondents’ unlawful intent reasonably may be inferred.<sup>56</sup> For example, a person’s  
3 awareness that an action is prohibited may be inferred from “the elaborate scheme for disguising  
4 . . . political contributions.”<sup>57</sup>

5 Carreno and Hunt submitted sworn affidavits in which they claim to have had no prior  
6 knowledge of federal campaign finance laws, state that they relied on Spano as to the  
7 permissibility of the loans, and were unaware that their conduct violated the law. We have no  
8 information that contradicts these assertions. Given this record, there is no basis on which to  
9 conclude that either contributor knowingly and willfully violated the Act.

10 While Spano and the Committee present a closer case, we cannot conclude that they  
11 acted knowingly and willfully. Spano was a lawyer and a sitting state officeholder, which would  
12 be a basis to infer a certain level of knowledge regarding the law. However, he also was a first  
13 time federal candidate who claims to have had very limited knowledge of federal campaign  
14 finance law, and claims to have relied on the mistaken advice of a political consultant who  
15 advised him that the Carreno and Hunt loans were permissible. The strongest piece of evidence  
16 as to knowing and willful conduct was Spano’s failure to timely file his FDS, which would have  
17 required listing the personal loans from Carreno and Hunt. Spano’s failure to timely file the FDS

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<sup>55</sup> *Id.* (citing jury instructions in *United States v. Edwards*, No. 11-61 (M.D.N.C. 2012), *United States v. Acevedo Vila*, No. 108-36 (D.P.R. 2009), *United States v. Feiger*, No. 07-20414 (E.D. Mich. 2008), and *United States v. Alford*, No. 05-69 (N.D. Fla. 2005)).

<sup>56</sup> *Cf. United States v. Hopkins*, 916 F.2d 207, 213 (5<sup>th</sup> Cir. 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5<sup>th</sup> Cir. 1989)). *Hopkins* involved a conduit contribution scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants’ convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

<sup>57</sup> *Hopkins*, 916 F.2d. at 214-15. As the *Hopkins* court noted, “It has long been recognized that ‘efforts at concealment [may] be reasonably explainable only in terms of motivation to evade’ lawful obligations.” *Id.* at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

1 could be viewed as evidence of an attempt to conceal the loans until after the election. Spano,  
2 however, has explained that the delayed filing of the report was inadvertent and attributable to  
3 the actions of his political consultant.<sup>58</sup>

4 Even if the facts might support an investigation into whether the violations were knowing  
5 and willful, the Commission may nonetheless “[r]efrain from making a formal finding that a  
6 violation was knowing and willful” as a matter of policy,<sup>59</sup> particularly when a respondent has  
7 made a full *sua sponte* submission, cooperated extensively, brought substantial information to  
8 the attention of the Commission and taken remedial measures to prevent a recurrence of the  
9 violations.<sup>60</sup> Under the circumstances here, we do not recommend that the Commission find that  
10 the violations were knowing and willful, or conduct additional fact-finding because the  
11 Respondents disclosed the violations, and cooperated in completing the *sua sponte* submission.<sup>61</sup>

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<sup>58</sup> Spano Aff. #2, ¶ 4.

<sup>59</sup> *Policy Regarding Self-Reporting of Campaign Finance Violations*, 72 Fed. Reg. 16695, 16,696 (Apr. 5, 2007) (“*Sua Sponte Policy*”).

<sup>60</sup> *See, e.g.* First General Counsel's Report at 8-10, MUR 7472 (Barletta) (Mar. 20, 2018); Factual and Legal Analysis at 13-14, MUR 6889 (Nat'l Air Transp. Ass'n) (Oct. 31, 2014). The only remedial action that Spano and the Committee have not taken is to amend the committee's reports to accurately reflect the source of the funds used to make the candidate loans or the receipt of contributions from Carreno and Hunt. Accordingly, we will include a recommendation requiring the Committee to amend its reports.

<sup>61</sup> *See* MUR 6889 (Nat'l Air Transp. Ass'n); *see also* MURs 5765 (Crop Production Services, Inc.); 5643 (Carter's, Inc.) The information suggests that Spano and the Committee initiated the *sua sponte* in response to media inquiries about the Carreno and Hunt loans after Spano filed his 2018 FDS. As discussed below, we take that fact into account in our recommendation that the Commission apply a *sua sponte* discount in its calculation of the civil penalty.



Pre-MUR 619 & MUR 7629 (Spano *et al.*)

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#### 5 **IV. RECOMMENDATIONS**

6 1. Open a Matter Under Review in connection with Pre-MUR 619 and merge it into  
7 MUR 7629.

8  
9 2. Find reason to believe that Cary Carreno violated 52 U.S.C. § 30116(a) by  
10 making excessive contributions.

11  
12 3. Find reason to believe that Karen L. Hunt violated 52 U.S.C. § 30116(a) by  
13 making excessive contributions.

14  
15 4. Find reason to believe that Vincent Ross Spano violated 52 U.S.C. § 30116(f) by  
16 accepting excessive contributions;

17  
18 5. Find reason to believe that Ross Spano for Congress and Robert Phillips, III in  
19 his official capacity as treasurer violated 52 U.S.C. §§ 30116(f) and 30104(b)(3)  
20 by accepting excessive contributions and misreporting loans.

21  
22 6. Find reason to believe that Ross Spano for Congress and Robert Phillips, III  
23 violated 11 C.F.R. § 103.3(b)(3) by failing to make timely refunds of excessive  
24 contributions.

25  
26 7. Approve the attached Factual and Legal Analysis.

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- 8. Enter into conciliation with Vincent Ross Spano, Ross Spano for Congress and Robert Phillips, III in his official capacity as treasurer, Cary Carreno and Karen L. Hunt prior to a finding of probable cause to believe.
- 9. Approve the attached conciliation agreements.
- 10. Approve the appropriate letters.

Lisa J. Stevenson  
Acting General Counsel

Charles Kitcher  
Acting Associate General Counsel  
for Enforcement

10/29/2019  
\_\_\_\_\_  
Date

*Peter Blumberg/ms*  
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Assistant General Counsel

*Kimberly D. Hart*  
\_\_\_\_\_  
Kimberly D. Hart  
Attorney

Attachments

- 1. Factual and Legal Analysis for Ross Spano and the Committee
- 2. Factual and Legal Analysis Cary Carreno
- 3. Factual and Legal Analyses for Karen L. Hunt

1 **FEDERAL ELECTION COMMISSION**  
2  
3 **FACTUAL AND LEGAL ANALYSIS**  
4

5 **MUR 7629**

6  
7 **RESPONDENTS:**

Vincent Ross Spano  
Ross Spano for Congress and  
Robert Phillips III in his official capacity  
as treasurer

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12 **I. INTRODUCTION**  
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14 Vincent Ross Spano (“Spano”), a candidate for 15th congressional district (and now a  
15 U.S. Congressional Representative) and his principal campaign committee, Spano for Congress  
16 and Robert Phillips III, in his official capacity as treasurer (the “Committee”), made a *sua sponte*  
17 submission disclosing that Spano received \$180,000 in three unsecured loans from personal  
18 friends, Cary Carreno and Karen L. Hunt from June to October 2018, during the period he was  
19 campaigning for office. Soon after receiving the funds, Spano transferred \$164,500 of the  
20 amount to the Committee.in what was reported as loans from the candidate’s personal funds.

21 During this time period, Spano failed to timely file his U.S. House Committee on Ethics  
22 Financial Disclosure Statement (“FDS”), which should have revealed Carreno and Hunt as the  
23 actual source of these funds. Spano’s belated filing of his FDS just before the 2016 general  
24 election, which disclosed three of the four Carreno and Hunt loans, triggered media reports  
25 regarding his possibly illegal conduct. Spano and the Committee subsequently made a  
26 *sua sponte* submission to the Commission in order to resolve possible violations of the Federal  
27 Election Campaign Act of 1971, as amended (“the” Act). The Complaint in MUR 7629 was  
28 filed after Respondents’ *sua sponte* submission, and alleged that the Committee’s failure to

1 actually refund or disgorge the funds derived from Carreno and Hunt's loans constitute further  
2 violations of the Act.

## 3 **II. FACTUAL BACKGROUND**

### 4 **A. Carreno and Hunt loan \$180,000 to Spano**

5 Spano, a licensed attorney and a sitting member of the Florida House of Representatives,  
6 announced his 2018 Congressional candidacy in April 2018.<sup>1</sup> Spano for Congress was Spano's  
7 principal campaign committee.<sup>2</sup> Carreno and Hunt state that they are personal friends of Spano  
8 who contributed to Spano's 2018 congressional campaign.<sup>3</sup>

9 Following discussions about Spano's personal financial issues and campaign fundraising  
10 problems, Carreno and Hunt loaned Spano the following amounts:

<u>Date</u>	<u>Lender</u>	<u>Recipient</u>	<u>Amount</u>
6/28/2018	Cary Carreno	Ross Spano	\$35,000
8/9/2018	Karen Hunt	Ross Spano	\$35,000
9/30/2018	Karen Hunt	Ross Spano	\$35,000
10/29/2018	Cary Carreno	Ross Spano	\$75,000

<sup>1</sup> Statement of Candidacy, V. Ross Spano (Apr. 18, 2018); *see also*, <http://sunshinestatenews.com/story/ross-spano-jumps-attorney-general-race>; <https://floridapolitics.com/archives/261741-ross-spano-exits-ag-race-files-for-cd-15> (article last accessed on Oct. 15, 2019).

<sup>2</sup> Statement of Organization, Ross Spano for Congress (Apr. 18, 2018).

<sup>3</sup> The Committee's disclosure reports indicate that Carreno made a primary election contribution of \$2,700 on May 10, 2018, and a \$1,700 general election contribution on the same day. *See* 2018 July Quarterly Report, Ross Spano for Congress (July 15, 2018). Hunt also made a \$1,000 primary election contribution on June 22, 2018, and another \$1,000 general election contribution on October 1, 2018. *See* 2018 July Quarterly Report; 2018 October Quarterly Report, Ross Spano for Congress (Oct. 15, 2018). A review of Florida's contribution database also indicates that Carreno made a total of \$5,000 in contributions to Spano's state campaigns in 2012 (\$1,000), 2014 (\$1,000) and 2018 (\$3,000); and that Hunt made a total of \$1,500 in contributions to Spano's state campaigns in 2016 (500) and 2018 (\$1,000). *See* <https://dos.myflorida.com/elections>.

		<b>TOTAL</b>	<b>\$180,000</b>
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1 Spano states that he had a limited understanding of federal campaign finance laws and  
2 consulted with his campaign consultant, Brock Mikosky, about accepting these personal loans.<sup>4</sup>  
3 Spano asserts that he believed a personal loan was permissible as long as the transaction was  
4 “arms-length” and a “legitimate loan” with proper terms.<sup>5</sup> Spano states that he executed written  
5 promissory notes for each loan, all of which required payment of a 5% interest rate.<sup>6</sup>

#### 6 **A. Spano Transfers Most of the Carreno and Hunt Funds to the Committee**

7  
8 Spano immediately used the Carreno and Hunt funds to make \$164,5000 in candidate  
9 loans to the Committee that were represented as being made from his personal funds.<sup>7</sup>

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4 Spano Aff. ¶¶ 11, 27. Spano’s second sworn affidavit details his conversations with Mikosky about the loans and provides a copy of a text message exchange to support his claim that he and Mikosky discussed accepting personal loans from Carreno. Spano Aff. #2, Attach. (copy of text messages). The text message exchange asks Mikosky if it would be permissible for him to loan the Committee money in the primary election, and use contributions from the general election to repay the candidate loan, and whether it would be permissible for Carreno to loan him money for the campaign and be repaid with general election contributions. *Id.*

The MUR 7629 Complaint references a statement from former Committee treasurer, Jamie Jodoin, who claims to have had no knowledge of the loans beforehand and denies that she advised Spano that the loans were permissible. See Compl. at 6. Although it appears that the Complainant inadvertently omitted the source for Jodoin’s statement, the likely source for the information can be found at <https://www.tampabay.com/florida-politics/buzz/2018/12/01/ross-spano-acknowledges-possible-violation-of-campaign-finance-law/> (article last accessed Oct. 15, 2019). The article speaks of Jodoin being interviewed about the loan issue and contains the same quotation as that found in the Complaint. *Id.*; see also Compl. at 6. Jodoin stated that when Spano loaned money to the campaign, “I was given checks and the only information I received was that they were from his personal funds.” *Id.*

5 *Id.* ¶¶ 11, 13-14, 27. Carreno and Hunt similarly state that they believed that the loans were permissible and would not constitute excessive contributions. Carreno Aff. ¶ 8; Hunt Aff. ¶ 7.

6 Spano Aff. ¶18.

7 See 2018 July Quarterly Report; 2018 Pre-Primary Report; 2018 October Quarterly Report; 2018 Post-General Report, Ross Spano for Congress (Jan. 31, 2019) (“Post-General Report”). The Submission states that Spano used the remaining \$15,500 in loan proceeds to cover business and personal expenses. Spano Aff. ¶¶ 15-17.



<u>Date</u>	<u>Election Cycle</u>	<u>Report</u>	<u>Source</u>	<u>Loan Amount</u>
6/30/2018	2018 Primary	July 2018 Quarterly	Personal funds	\$35,000 <sup>8</sup>
8/9/2018 <sup>9</sup>	2018 Primary	2018 Pre-Primary	Personal funds	\$32,000
9/30/2018	2018 General	October 2018 Quarterly	Personal funds	\$27,500
10/31/2018	2018 General	Post-General	Personal funds	\$70,000
			<b>TOTAL</b>	<b>\$164,500</b>

1

2 On three instances, Spano states that he used a portion (\$15,500) of the \$180,000 loan  
3 proceeds to pay business and other personal expenses: \$3,000 of the \$35,000 loan amount  
4 (August 9<sup>th</sup>); \$7,500 of the \$35,000 loan amount (September 30<sup>th</sup>), and \$5,000 of the \$75,000  
5 loan amount (October 29<sup>th</sup>).

### 6 C. Spano's Late Filing of 2018 FDS

7 The U.S. House Committee on Ethics requires an individual who qualifies as a candidate  
8 during an election (even-numbered) year to file a FDS within 30 days of becoming a candidate or  
9 May 15 of that year, whichever is later.<sup>10</sup> The FDS must contain information regarding the

<sup>8</sup> The submission states that Spano's loan to the Committee on June 30, 2018, was for \$35,000 and not \$27,500 as originally indicated in the initial Submission. Suppl. Submission #2 at 1. The true amount was accurately reflected on the Committee's disclosure report. See 2018 July Quarterly Report.

<sup>9</sup> While the 2018 Pre-Primary Report notes that the candidate loan was made on August 8, 2018, which would have been a day before the loan was made on August 9, 2018, counsel for Respondents has indicated that Spano inadvertently put the incorrect date on the check to the Committee. Counsel represents that the loan date should be reflected as August 9<sup>th</sup> instead of August 8<sup>th</sup>.

<sup>10</sup> See <https://ethics.house.gov/financial-disclosure/specific-disclosure-requirements>. There are two exceptions to this general rule: First, a qualifying candidate must file no later than 30 days before any election (including primaries) in which the individual is participating. *Id.* Thus, if the individual becomes a candidate on January 5th in an election year and the primary is on April 22nd, the report is due by March 23 (no later than 30 days before the election). *Id.* Second, if a candidate crosses the \$5,000 threshold within the 30-day period prior to an election, the candidate must file the statement immediately after he or she raises or spends more than \$5,000. *Id.* Candidates in a special election also follow this filing rule. *Id.*

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Factual and Legal Analysis for Spano and Committee  
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1 financial interests of the candidate and spouse and children, if applicable, earned income, assets  
2 and unearned income, liabilities, gifts, and compensation in excess of \$5,000 from one source.<sup>11</sup>

3 The Committee was notified by the House Committee on Ethics in early spring 2018 of  
4 the requirement to file the financial report.<sup>12</sup> Spano claims that he passed the notice onto Brock  
5 Mikosky, his political consultant, to handle the FDS filing; and Mikosky assured him that he  
6 would request a filing extension which was completed on May 18, 2018.<sup>13</sup> Spano further states  
7 that he followed up with Mikosky twice about the FDS filing, once a “month or so” after the  
8 initial conversation and again in September 2018.<sup>14</sup> On both occasions, Mikosky allegedly  
9 informed him that the Committee had still not received a notice about the deadline for the FDS  
10 but that there were “no worries” and that he would make sure that they were still “in good  
11 standing.”<sup>15</sup> It appears that Spano may have believed that Mikosky was waiting to hear back  
12 about the extension request before providing the information necessary to complete the FDS and  
13 Mikosky failed to follow up on the extension request which resulted in the FDS not being filed  
14 until November 3, 2018. Spano states that Mikosky took responsibility for not filing the overdue  
15 statement, and paid the late filing fee.<sup>16</sup>

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<sup>11</sup> *Id.*

<sup>12</sup> Spano Aff. #2 at ¶ 1.

<sup>13</sup> *Id.* ¶ 2. On May 18, 2018, Spano requested and was granted a sixty (60) day extension to file the FDS on July 17, 2018. See [http://clerk.house.gov/public\\_disc/financial-pdfs/2018/30004716.pdf](http://clerk.house.gov/public_disc/financial-pdfs/2018/30004716.pdf).

<sup>14</sup> Spano Aff. #2 at ¶ 2.

<sup>15</sup> *Id.* ¶ 3.

<sup>16</sup> *Id.* ¶¶ 4, 5; see also E-mail from Elliot Berke, Esq. to Kimberly Hart, OGC (July 26, 2019) (copy of check covering the late filing fee for Spano’s 2018 FDS).

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1 According to Spano, the issue of the unfiled FDS arose again on November 2, 2018, three  
2 days before the general election, when he was attending a “get-out-the-vote” event.<sup>17</sup> Prior to the  
3 event, Mikosky approached him to let him know that a reporter from a local newspaper was  
4 asking questions about why the FDS had not been filed.<sup>18</sup> On November 3, 2018, three days  
5 prior to the general election, then-candidate Spano filed his FDS with the Clerk of the U.S.  
6 House of Representatives which disclosed three of the four personal loans from Carreno and  
7 Hunt as liabilities with a value between \$50,001 and \$100,000.<sup>19</sup>

#### 8 **D. Sua Sponte Submission and Complaint**

9 Beginning December 2, 2018, and thereafter, several newspapers published articles  
10 regarding Spano’s potential violations of the Act by using the loan proceeds to make loans to  
11 Spano’s Committee.<sup>20</sup> Spano states that this attention caused him to seek outside legal advice  
12 about the permissibility of the loans, and led to the filing of the *sua sponte* submission.<sup>21</sup> The  
13 Submission indicates that, upon learning of the potential unlawfulness of the loans, he consulted

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<sup>17</sup> *Id.* ¶ 4.

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

<sup>19</sup> See Financial Disclosure Statement, V. Ross Spano (Nov. 3, 2018) (“FDS”) located at [http://clerk.house.gov/public\\_disc/financial-pdfs/2018/10023479.pdf](http://clerk.house.gov/public_disc/financial-pdfs/2018/10023479.pdf). The FDS does not appear to have disclosed the October 29, 2018, Carreno loan which would have increased Spano’s liabilities by an additional \$75,000.

<sup>20</sup> See e.g., <https://floridapolitics.com/archives/282395-ross-spano-admits-he-used-personal-loans-for-campaign>; <https://www.theledger.com/news/20181202/newly-elected-republican-us-rep-ross-spano-acknowledges-possible-campaign-finance-violations>; (article last accessed on Oct. 15, 2019); <http://www.tampabay.com/florida-politics/buzz/2018/12/01/ross-spano-acknowledges-possible-violation-of-campaign-finance-law/> (article last accessed on Oct. 15, 2019); <https://thehill.com/homenews/campaign/419377-incoming-gop-lawmaker-says-he-may-have-violated-campaign-finance-law> (article last accessed on Oct. 15, 2019). The articles do not specifically state the manner by which they came into possession of the actual submission.

<sup>21</sup> Spano Aff. #1, ¶ 22.

1 with legal counsel for the first time, terminated his prior accounting, compliance and consulting  
2 staff, and hired new staff to handle those tasks as a means of corrective action.<sup>22</sup>

3 On December 24, 2018, Spano repaid Carreno's loans with interest totaling \$106,432.56  
4 and the remaining amount of \$5,040.41 on December 28, 2018.<sup>23</sup> On December 28, 2018, Spano  
5 repaid Hunt's loans in full including 5% interest totaling \$71,063.38.<sup>24</sup> Counsel has confirmed  
6 that Spano secured a loan from CenterState Bank to repay the Carreno and Hunt loans as  
7 reflected on Spano's 2019 FDS.<sup>25</sup> On August 5, 2019, a Complaint was filed alleging violations  
8 of the Act based on the same set of facts contained in the *sua sponte* submission.<sup>26</sup> In addition,  
9 the Complaint alleged that the Committee's failure to refund or disgorge the funds it received  
10 from Carreno and Hunt constitutes further violations of the Act.

11 On September 20, 2019, the Committee refunded \$110,000 of the \$164,500 used by  
12 Spano to make the candidate loans.<sup>27</sup> However, the counsel for the Committee has indicated that  
13 it has not yet refunded the remaining \$54,500 in candidate loans.<sup>28</sup>

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<sup>22</sup> Submission at 2.

<sup>23</sup> *Id.* ¶ 25.

<sup>24</sup> *Id.* ¶ 26.

<sup>25</sup> See Financial Disclosure Statement, V. Ross Spano (May 15, 2019) ("FDS #2") located at [http://clerk.house.gov/public\\_disc/financial-pdfs/2018/30004716.pdf](http://clerk.house.gov/public_disc/financial-pdfs/2018/30004716.pdf). Spano reported a new liability in the form of a promissory note dated December 28, 2018, with CenterState Bank for an amount ranging from \$100,000 to \$250,001. *Id.* The timing of the promissory note corresponds to the amount of the loans as well as the time period in which the loans repayments were made. *Id.*

<sup>26</sup> See Compl. at 7-9.

<sup>27</sup> See 2019 October Quarterly Report, Spano for Congress (Oct. 15, 2019).

<sup>28</sup> See E-mail from Elliot Berke, Esq. to Kimberly Hart, OGC (Oct. 25, 2019, 9:42 am).

## 1 II. LEGAL ANALYSIS

### 2 A. There is Reason to Believe that the Carreno and Hunt loans 3 were excessive contributions to Spano and the Committee.

4  
5 A contribution is any gift, subscription, loan, advance, or deposit of money or anything of  
6 value made by any person for the purpose of influencing any election for Federal office.<sup>29</sup> Under  
7 the Act, an individual may not make a contribution to a candidate with respect to any election in  
8 excess of the legal limit, which was \$2,700 per election during the 2017-2018 election cycle.<sup>30</sup>  
9 Any candidate who receives a contribution as defined at 11 C.F.R. part 100, subparts B and C,  
10 obtains any loan, or makes any disbursement, in connection with his or her campaign shall be  
11 considered as having received such contribution, obtained such loan or made such disbursement  
12 as an agent of his or her authorized committee.<sup>31</sup> In addition, the Act and Commission  
13 regulations further provide that no person may make, and no candidate or candidate's authorized  
14 political committee shall knowingly accept, any contribution that violates the contribution limits  
15 set forth in section 30116.<sup>32</sup>

16 A "loan" includes a guarantee, endorsement, and any other form of security.<sup>33</sup> A loan  
17 that exceeds the contribution limits, or otherwise violates 52 U.S.C. §§ 30116 or 30118, is

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<sup>29</sup> 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.52(a).

<sup>30</sup> *See Id.* § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1). Further, a candidate committee must report the identity of any person who makes a contribution to the committee during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of \$200 within the election cycle. 52 U.S.C. § 30104(b)(3).

<sup>31</sup> 52 U.S.C. § 30102(e)(2); 11 C.F.R. §§ 101.2, 102.8(a).

<sup>32</sup> 52 U.S.C. § 30116(f).

<sup>33</sup> 11 C.F.R. § 100.52(b); *see also* 52 U.S.C. § 30101(8)(B)(vii). Each endorser or guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written agreement. 11 C.F.R. §§ 100.52(b)(3), 100.82(c).

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1 unlawful, whether or not it is repaid.<sup>34</sup> A loan to a political committee or a candidate by a  
2 commercial bank is exempt from the definition of contribution, if such loan is made in  
3 accordance with applicable law and in the ordinary course of business.<sup>35</sup>

4 In the present matter, Spano did not use a commercial lender to obtain the loans in  
5 question, but instead took loans from personal friends.<sup>36</sup> Because the Carreno and Hunt loans  
6 were not made by a commercial lending institution in the ordinary course of business, they are  
7 not exempt from the definition of a “contribution.” As a result, Carreno and Hunt made  
8 excessive contributions to Spano and the Committee.<sup>37</sup>

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<sup>34</sup> *Id.* § 100.52(b).

<sup>35</sup> *Id.* § 100.82(a). A loan only will be deemed to be made in the ordinary course of business if it: “(1) [b]ears the usual and customary interest rate of the lending institution for the category of loan involved; (2) [i]s made on a basis that assures repayment; (3) [i]s evidenced by a written instrument; and (4) [i]s subject to a due date or amortization schedule.” A loan is considered “made on a basis that assures repayment” if it is obtained using a perfected security interest in collateral owned by the candidate, the fair market value of the collateral is equal to or greater than the loan amount, and the candidate provides documentation to show that the lending institution has a perfected security interest in the collateral. *Id.*

<sup>36</sup> Even if Spano could satisfy the “commercial lender” requirement, the loans do not satisfy a key requirement of 100.82(a) because they were not made on a “basis that reassures repayment.” *Id.* § 100.82(e). For purposes of the section 100.82(a) analysis, it is irrelevant whether the loans meet the remaining requirements of 100.82(a) because they were not obtained from a commercial lender and were not made on the basis that reassures repayment. *Id.* In order for the loans to satisfy this element, they must have been obtained using a perfected security interest in collateral owned by the candidate that meets the requirements of the regulation. *Id.* The promissory notes contain no information suggesting any perfected security interest for any of the loans. *See* Suppl. Submission, Attach. (copies of promissory notes).

<sup>37</sup> The Commission has previously sought or found reason to believe in similar situations involving a candidate’s acceptance of personal loans. *See, e.g.*, MURs 7001, 7002, 7003, 7009 and RR 16L-09 (Ted Cruz) (Commission found reason to believe that the Committee failed to properly report \$1,064,000 in loans made to the committee and dismissed allegations that Cruz’ wife made and the committee accepted excessive contributions); MUR 6417 (Huffman) (Commission found reason to believe that candidate and committee violated the Act by accepting excessive contributions in the form of loans from the candidate’s wife, failing to report the proper source of the loan, and failing to file the proper C-1 disclosure report, and that the candidate’s wife violated the Act by accepting excessive contributions).

1           The Act and Commission regulations allow candidates for federal office to make  
2 unlimited expenditures, including contributions or loans to their principal campaign committees,  
3 as long as such expenditures, contributions or loans are made from their own “personal funds.”<sup>38</sup>  
4 Although the Committee reported receiving \$164,500 in candidate loans, these funds came from  
5 Carreno and Hunt, rather than from Spano’s personal funds.

6           We also conclude that the \$15,500 loaned to Spano by Carreno and Hunt that Spano used  
7 to pay for expenses related to his law practice and certain other personal expenses, also constitute  
8 excessive contributions. The Commission's regulations provide that a third party's payment of a  
9 candidate's personal expense shall be deemed a contribution “unless the payment would have  
10 been made irrespective of the candidacy.”<sup>39</sup> In this instance, both contributors have stated in  
11 their affidavits that their motivation in making the loans was to support Spano’s candidacy.<sup>40</sup>  
12 Carreno acknowledged that he understood Spano’s “focus on his campaign” had caused his  
13 personal finances to “suffer” and also “took away from his law practice,” suggesting that even if  
14 he knew Spano intended to use part of the loan for non-campaign expenses, it was to replace

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<sup>38</sup> 11 C.F.R. §§ 110.10, 100.33. “Personal funds” include (1) all assets in which a candidate has legal title or an equitable interest, as well as salary and other earned income from *bona fide* employment;(2) dividends and proceeds from the sale of the candidate’s stocks or other investments; (3) bequests to the candidate;(4) income from trusts established before candidacy; (5) income from trusts established by bequest after candidacy of which the candidate is the beneficiary;( 6) gifts of a personal nature which had been customarily received prior to candidacy; and (7) proceeds from lotteries and similar legal games of chance. 52 U.S.C. § 30101(26); 11 C.F.R. § 100.33.

<sup>39</sup> 11 C.F.R. § 113.1(g)(6); *see also* Explanation and Justification, Third Party Payments of Personal Use Expenses, 60 Fed. Reg. 7862, 7871 (Feb. 9, 1995) (“If a third party pays for the candidate's personal expenses, but would not ordinarily have done so if that candidate were not running for office, the third party is effectively making the payment for the purpose of assisting that candidacy.”). *See, e.g.*, Moran SOR at 4; Clinton SOR at 3. The other factors noted in the analysis were: (1) whether receipt of funds freed up other funds of the candidate for campaign purposes; and (2) whether the candidate would have more time to spend on the campaign instead of pursuing their usual employment. *Id.*

<sup>40</sup> Carreno Aff. ¶ 6; Hunt Aff. ¶ 4.

1 personal income lost to campaigning.<sup>41</sup> Accordingly, the \$15,500 in funds loaned to Spano that  
2 were used for business and personal expenses are contributions.

3 The Commission finds reason to believe that Cary Carreno<sup>42</sup> and Karen L. Hunt<sup>43</sup>  
4 violated 52 U.S.C. § 30116(a) by making excessive contributions, and that Vincent Ross Spano  
5 and Ross Spano for Congress and Robert Phillips, III in his official capacity as treasurer, violated  
6 52 U.S.C. § 30116(f) by knowingly accepting excessive contributions. The Commission also  
7 finds reason to believe that Ross Spano for Congress and Robert Phillip, III in his official  
8 capacity as treasurer violated 52 U.S.C. § 30104(b)(3)(A) and 11 C.F.R. § 104.3(a)(3)(vii)(B) by  
9 misreporting that the funds received from Carreno and Hunt were a loan from Spano's personal  
10 funds.<sup>44</sup>

11 **B. There is Reason to Believe that the Committee violated the Act by**  
12 **failing to timely refund or disgorge the Carreno and Hunt contributions.**

13  
14 The Complaint alleges that Spano and the Committee failed to timely refund and/or  
15 disgorge the \$180,000 in excessive contributions that Spano received from the Carreno and Hunt

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<sup>41</sup> Carreno Aff. ¶ 6. Spano and Carreno have claimed that, due to their lengthy personal friendship, both have loaned each other money over the years, but neither one has presented information to confirm the previous lending history, or claimed that these loans would have been made irregardless of Spano's candidacy. *See* Spano Aff. #1 ¶ 3; Carreno Aff. ¶ 4.

<sup>42</sup> Carreno made the maximum \$2,700 contribution to Spano's 2018 primary election campaign and also contributed \$1,700 to Spano's 2018 general election campaign, cycle which means he could have contributed an additional \$1,000 contribution. As a result only \$109,000 of his \$110,000 in loans were excessive contributions.

<sup>43</sup> Hunt contributed \$1,000 towards Spano's 2018 primary election campaign and another \$1,000 towards Spano's 2018 general election campaign which means she could have contributed an additional \$1,700 per election cycle, or a total of \$3,400. As a result only \$66,600 of her \$70,000 in loans to Spano were excessive contributions.

<sup>44</sup> Based on the facts of this matter, including the misreporting of Spano as the source of the funds to make the candidate loans, Carreno and Hunt could be viewed as having made contributions in the name of another. However, given that Carreno, Hunt and Spano all claim to have been unaware of the unlawfulness of making personal loans funds to Spano for the purpose of supporting his campaign committee and the fact that the loans were reported, even if belatedly; we do not believe that also pursuing this violation as a contribution in the name of another is necessary under these circumstances.



1 loans. In addition to the provisions of the Act that prohibit excessive contributions and  
2 contributions in the name of another, section 103.3(b)(3) of the Commission regulations provides  
3 that a campaign committee’s treasurer is “responsible for examining all contributions received  
4 for evidence of illegality” and for determining whether aggregate contributions from the same  
5 contributor exceeds federal limits or violates source prohibitions imposed under federal law.<sup>45</sup> If  
6 a treasurer determines – when the committee receives and deposits a contribution – that it does  
7 not appear to violate federal contribution limits and source prohibitions, but “later discovers that  
8 it is illegal based on new evidence not available to the committee at the time of the receipt and  
9 deposit,” the treasurer must refund the contribution to the contributor (if their identity is known)  
10 no later than sixty (60) days after discovering its illegality.”<sup>46</sup>

11 The Committee was aware of the impermissibility of the Carreno and Hunt loans no later  
12 than December 3, 2018, the date on which it filed its *sua sponte* submission. Accordingly, the  
13 Committee was required to refund or disgorge the funds by no later than January 3, 2019.<sup>47</sup>  
14 Although Spano repaid Carreno and Hunt personal loans in December 2018, the Committee has  
15 only refunded \$110,000 of the \$164,500 in excessive contributions as of October 25, 2019, over

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<sup>45</sup> 11 C.F.R. § 103.3(b)(2).

<sup>46</sup> *Id.* § 103.3(b)(3). The provision also states that “if the political committee does not have sufficient funds to refund the contribution at the time the illegality was discovered, the political committee shall make the refund from the next funds it receives.” *Id.*

<sup>47</sup> Spano repaid in full the \$180,000 in Carreno and Hunt loans between December 24 and December 28, 2018, which would have also included the \$15,500 of those funds used by Spano to cover business and personal expenses (that were not deposited into the Committee’s account). We believe that the repayment of the loans should be viewed as a refund, albeit untimely, of the excessive contributions. Since the repayment of the loans took place within the 30 day time period from when the respondents became aware of the unlawfulness of the contributions and we have already made reason-to-believe findings as to the making and receipt of the total \$180,000 in excessive contributions, the Commission makes no additional findings as to the \$15,500 in excessive contributions received and used by Spano.

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- 1 nine months after the time proscribed by the Commission regulations. Accordingly, we
- 2 recommend that Ross Spano for Congress and Robert Phillips, III violated 11 C.F.R.
- 3 § 103.3(b)(3) by failing to timely refund the excessive contributions.

1 **FEDERAL ELECTION COMMISSION**  
2  
3 **FACTUAL AND LEGAL ANALYSIS**  
4

5 **MUR 7629**

6  
7 **RESPONDENTS:**

Cary Carreno

8  
9  
10 **I. INTRODUCTION**  
11

12 Cary Carreno made a *sua sponte* submission (“Submission”) disclosing that he had  
13 loaned \$110,000 to Vincent Ross Spano (“Spano”), a candidate for 15th congressional district  
14 (and now a U.S. Congressional Representative) in June and October 2018, at a time during which  
15 Spano was campaigning for office. Soon after receiving the funds, Spano transferred \$105,500  
16 of the amount to his principal campaign committee, Spano for Congress and Robert Phillips, III,  
17 in his official capacity as treasurer (the “Committee”) in what was reported as loans from the  
18 candidate’s personal funds. Spano used the remaining \$5,000 to cover business and personal  
19 expenses.

20 The Complaint in MUR 7629 was filed after Respondent’s *sua sponte* submission, and  
21 alleged that the Committee’s failure to actually refund or disgorge the funds derived, in part,  
22 from Carreno’s loans constitute further violations of the Act.

23 **II. FACTUAL BACKGROUND**

24 **A. Carreno loans \$110,000 to Spano**

25 Spano, a licensed attorney and a sitting member of the Florida House of Representatives,  
26 announced his 2018 Congressional candidacy in April 2018.<sup>1</sup> Spano for Congress was Spano’s

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<sup>1</sup> Statement of Candidacy, V. Ross Spano (Apr. 18, 2018); *see also*, <http://sunshinestatenews.com/story/ross-spano-jumps-attorney-general-race>; <https://floridapolitics.com/archives/261741-ross-spano-exits-ag-race-files-for-cd-15> (article last accessed on Oct. 15, 2019).

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1 principal campaign committee.<sup>2</sup> Carreno states that he is a personal friend of Spano who  
2 contributed to Spano's 2018 congressional campaign.<sup>3</sup>

3 Following discussions about Spano's personal financial issues and campaign fundraising  
4 problems, Carreno loaned Spano the following amounts:

<u>Date</u>	<u>Lender</u>	<u>Recipient</u>	<u>Amount</u>
6/28/2018	Cary Carreno	Ross Spano	\$35,000
10/29/2018	Cary Carreno	Ross Spano	\$75,000
		<b>TOTAL</b>	<b>\$110,000</b>

5 Spano executed written promissory notes for each loan, all of which required payment of  
6 a 5% interest rate.<sup>4</sup>

7 **B. Spano Transfers Most of the Carreno Funds to the Committee**

8  
9 Spano immediately used the Carreno funds to make \$105,000 in candidate loans to the  
10 Committee that were represented as being made from his personal funds.<sup>5</sup>

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<sup>2</sup> Statement of Organization, Ross Spano for Congress (Apr. 18, 2018).

<sup>3</sup> The Committee's disclosure reports indicate that Carreno made a primary election contribution of \$2,700 on May 10, 2018, and a \$1,700 general election contribution on the same day. *See* 2018 July Quarterly Report, Ross Spano for Congress (July 15, 2018). A review of Florida's contribution database also indicates that Carreno made a total of \$5,000 in contributions to Spano's state campaigns in 2012 (\$1,000), 2014 (\$1,000) and 2018 (\$3,000). *See* <https://dos.myflorida.com/elections>.

<sup>4</sup> Spano Aff. ¶18.

<sup>5</sup> *See* 2018 July Quarterly Report; 2018 Post-General Report, Ross Spano for Congress (Jan. 31, 2019). The Submission states that Spano used the remaining \$5,000 in loan proceeds to cover business and personal expenses. Spano Aff. ¶¶ 15-17.

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<u>Date</u>	<u>Election Cycle</u>	<u>Report</u>	<u>Source</u>	<u>Loan Amount</u>
6/30/2018	2018 Primary	July 2018 Quarterly	Personal funds	\$35,000 <sup>6</sup>
10/31/2018	2018 General	Post-General	Personal funds	\$70,000
			<b>TOTAL</b>	<b>\$105,000</b>

1  
2 Spano states that he used \$5,000 of the \$75,000 loan proceeds to pay business and other  
3 personal expenses.<sup>7</sup>

#### 4 C. Sua Sponte Submission and Complaint

5 Beginning December 2, 2018, and thereafter, several newspapers published articles  
6 regarding Spano's potential violations of the Act by using the loan proceeds to make loans to  
7 Spano's Committee.<sup>8</sup> Spano states that this attention caused him to seek outside legal advice  
8 about the permissibility of the loans, and led to the filing of the *sua sponte* submission.<sup>9</sup>

9 On December 24, 2018, Spano repaid Carreno's loans with interest totaling \$106,432.56  
10 and the remaining amount of \$5,040.41 on December 28, 2018.<sup>10</sup> Counsel has confirmed that

<sup>6</sup> The submission states that Spano's loan to the Committee on June 30, 2018, was for \$35,000 and not \$27,500 as originally indicated in the initial Submission. Suppl. Submission #2 at 1. The true amount was accurately reflected on the Committee's disclosure report. See 2018 July Quarterly Report.

<sup>7</sup> Spano Aff. ¶ 17.

<sup>8</sup> See e.g., <https://floridapolitics.com/archives/282395-ross-spano-admits-he-used-personal-loans-for-campaign>; <https://www.theledger.com/news/20181202/newly-elected-republican-us-rep-ross-spano-acknowledges-possible-campaign-finance-violations>; (article last accessed on Oct. 15, 2019); <http://www.tampabay.com/florida-politics/buzz/2018/12/01/ross-spano-acknowledges-possible-violation-of-campaign-finance-law/> (article last accessed on Oct. 15, 2019); <https://thehill.com/homenews/campaign/419377-incoming-gop-lawmaker-says-he-may-have-violated-campaign-finance-law> (article last accessed on Oct. 15, 2019). The articles do not specifically state the manner by which they came into possession of the actual submission.

<sup>9</sup> Spano Aff. #1, ¶ 22.

<sup>10</sup> *Id.* ¶ 25.

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1 Spano secured a loan from CenterState Bank to repay the Carreno loans as reflected on Spano's  
2 2019 FDS.<sup>11</sup> On August 5, 2019, a Complaint was filed alleging violations of the Act based on  
3 the same set of facts contained in the *sua sponte* submission.<sup>12</sup> In addition, the Complaint  
4 alleged that the Committee's failure to refund or disgorge the funds it received from Carreno  
5 constitutes further violations of the Act.

6 On September 20, 2019, the Committee refunded \$50,500 of the \$105,000 used by Spano  
7 to make the candidate loans.<sup>13</sup> However, the counsel for the Committee has indicated that it has  
8 not yet refunded the remaining \$54,500 in candidate loans.<sup>14</sup>

## 9 II. LEGAL ANALYSIS

10 A contribution is any gift, subscription, loan, advance, or deposit of money or anything of  
11 value made by any person for the purpose of influencing any election for Federal office.<sup>15</sup> Under  
12 the Act, an individual may not make a contribution to a candidate with respect to any election in  
13 excess of the legal limit, which was \$2,700 per election during the 2017-2018 election cycle.<sup>16</sup>  
14 Any candidate who receives a contribution as defined at 11 C.F.R. part 100, subparts B and C,

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<sup>11</sup> See Financial Disclosure Statement, V. Ross Spano (May 15, 2019) ("FDS #2") located at [http://clerk.house.gov/public\\_disc/financial-pdfs/2018/30004716.pdf](http://clerk.house.gov/public_disc/financial-pdfs/2018/30004716.pdf). Spano reported a new liability in the form of a promissory note dated December 28, 2018, with CenterState Bank for an amount ranging from \$100,000 to \$250,001. *Id.* The timing of the promissory note corresponds to the amount of the loans as well as the time period in which the loans repayments were made. *Id.*

<sup>12</sup> See Compl. at 7-9.

<sup>13</sup> See 2019 October Quarterly Report, Spano for Congress (Oct. 15, 2019).

<sup>14</sup> See E-mail from Elliot Berke, Esq. to Kimberly Hart, OGC (Oct. 25, 2019, 9:42 am).

<sup>15</sup> 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.52(a).

<sup>16</sup> See *Id.* § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1). Further, a candidate committee must report the identity of any person who makes a contribution to the committee during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of \$200 within the election cycle. 52 U.S.C. § 30104(b)(3).

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1 obtains any loan, or makes any disbursement, in connection with his or her campaign shall be  
2 considered as having received such contribution, obtained such loan or made such disbursement  
3 as an agent of his or her authorized committee.<sup>17</sup> In addition, the Act and Commission  
4 regulations further provide that no person may make, and no candidate or candidate's authorized  
5 political committee shall knowingly accept, any contribution that violates the contribution limits  
6 set forth in section 30116.<sup>18</sup>

7 A "loan" includes a guarantee, endorsement, and any other form of security.<sup>19</sup> A loan  
8 that exceeds the contribution limits, or otherwise violates 52 U.S.C. §§ 30116 or 30118, is  
9 unlawful, whether or not it is repaid.<sup>20</sup> A loan to a political committee or a candidate by a  
10 commercial bank is exempt from the definition of contribution, if such loan is made in  
11 accordance with applicable law and in the ordinary course of business.<sup>21</sup>

12 In the present matter, Spano did not use a commercial lender to obtain the loans in  
13 question, but instead took loans from personal friends.<sup>22</sup> Because the Carreno loans were not

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<sup>17</sup> 52 U.S.C. § 30102(e)(2); 11 C.F.R. §§ 101.2, 102.8(a).

<sup>18</sup> 52 U.S.C. § 30116(f).

<sup>19</sup> 11 C.F.R. § 100.52(b); *see also* 52 U.S.C. § 30101(8)(B)(vii). Each endorser or guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written agreement. 11 C.F.R. §§ 100.52(b)(3), 100.82(c).

<sup>20</sup> *Id.* § 100.52(b).

<sup>21</sup> *Id.* § 100.82(a). A loan only will be deemed to be made in the ordinary course of business if it: "(1) [b]ears the usual and customary interest rate of the lending institution for the category of loan involved; (2) [i]s made on a basis that assures repayment; (3) [i]s evidenced by a written instrument; and (4) [i]s subject to a due date or amortization schedule." A loan is considered "made on a basis that assures repayment" if it is obtained using a perfected security interest in collateral owned by the candidate, the fair market value of the collateral is equal to or greater than the loan amount, and the candidate provides documentation to show that the lending institution has a perfected security interest in the collateral. *Id.*

<sup>22</sup> Even if Spano could satisfy the "commercial lender" requirement, the loans do not satisfy a key requirement of 100.82(a) because they were not made on a "basis that reassures repayment." *Id.* § 100.82(e). For purposes of the section 100.82(a) analysis, it is irrelevant whether the loans meet the remaining requirements of

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1 made by a commercial lending institution in the ordinary course of business, they are not exempt  
2 from the definition of a “contribution.” As a result, Carreno made excessive contributions to  
3 Spano and the Committee.<sup>23</sup>

4 The Act and Commission regulations allow candidates for federal office to make  
5 unlimited expenditures, including contributions or loans to their principal campaign committees,  
6 as long as such expenditures, contributions or loans are made from their own “personal funds.”<sup>24</sup>  
7 Although the Committee reported receiving \$105,000 in candidate loans, these funds came from  
8 Carreno, rather than from Spano’s personal funds.

9 We also conclude that the \$5,000 loaned to Spano by Carreno that Spano used to pay for  
10 expenses related to his law practice and certain other personal expenses, also constitute excessive  
11 contributions. The Commission’s regulations provide that a third party’s payment of a  
12 candidate’s personal expense shall be deemed a contribution “unless the payment would have

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100.82(a) because they were not obtained from a commercial lender and were not made on the basis that reassures repayment. *Id.* In order for the loans to satisfy this element, they must have been obtained using a perfected security interest in collateral owned by the candidate that meets the requirements of the regulation. *Id.* The promissory notes contain no information suggesting any perfected security interest for any of the loans. *See* Suppl. Submission, Attach. (copies of promissory notes).

<sup>23</sup> The Commission has previously sought or found reason to believe in similar situations involving a candidate’s acceptance of personal loans. *See, e.g.*, MURs 7001, 7002, 7003, 7009 and RR 16L-09 (Ted Cruz) (Commission found reason to believe that the Committee failed to properly report \$1,064,000 in loans made to the committee and dismissed allegations that Cruz’ wife made and the committee accepted excessive contributions); MUR 6417 (Huffman) (Commission found reason to believe that candidate and committee violated the Act by accepting excessive contributions in the form of loans from the candidate’s wife, failing to report the proper source of the loan, and failing to file the proper C-1 disclosure report, and that the candidate’s wife violated the Act by accepting excessive contributions).

<sup>24</sup> 11 C.F.R. §§ 110.10, 100.33. “Personal funds” include (1) all assets in which a candidate has legal title or an equitable interest, as well as salary and other earned income from *bona fide* employment;(2) dividends and proceeds from the sale of the candidate’s stocks or other investments;(3) bequests to the candidate;(4) income from trusts established before candidacy;(5) income from trusts established by bequest after candidacy of which the candidate is the beneficiary;(6) gifts of a personal nature which had been customarily received prior to candidacy; and (7) proceeds from lotteries and similar legal games of chance. 52 U.S.C. § 30101(26); 11 C.F.R. § 100.33.



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1 been made irrespective of the candidacy.”<sup>25</sup> In this instance, Carreno stated in his affidavit that  
2 his motivation in making the loans was to support Spano’s candidacy. <sup>26</sup> Carreno acknowledged  
3 that he understood Spano’s “focus on his campaign” had caused his personal finances to “suffer”  
4 and also “took away from his law practice,” suggesting that even if he knew Spano intended to  
5 use part of the loan for non-campaign expenses, it was to replace personal income lost to  
6 campaigning. <sup>27</sup> Accordingly, the \$5,000 in funds loaned to Spano that were used for business  
7 and personal expenses are contributions.

8 The Commission finds reason to believe that Cary Carreno violated 52 U.S.C. § 30116(a)  
9 by making excessive contributions.<sup>28</sup>

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<sup>25</sup> 11 C.F.R. § 113.1(g)(6); *see also* Explanation and Justification, Third Party Payments of Personal Use Expenses, 60 Fed. Reg. 7862, 7871 (Feb. 9, 1995) (“If a third party pays for the candidate's personal expenses, but would not ordinarily have done so if that candidate were not running for office, the third party is effectively making the payment for the purpose of assisting that candidacy.”). *See, e.g.,* Moran SOR at 4; Clinton SOR at 3. The other factors noted in the analysis were: (1) whether receipt of funds freed up other funds of the candidate for campaign purposes; and (2) whether the candidate would have more time to spend on the campaign instead of pursuing their usual employment. *Id.*

<sup>26</sup> Carreno Aff. ¶ 6.

<sup>27</sup> Carreno Aff. ¶ 6. Spano and Carreno have claimed that, due to their lengthy personal friendship, both have loaned each other money over the years, but neither one has presented information to confirm the previous lending history, or claimed that these loans would have been made regardless of Spano’s candidacy. *See* Spano Aff. #1 ¶ 3; Carreno Aff. ¶ 4.

<sup>28</sup> Carreno made the maximum \$2,700 contribution to Spano’s 2018 primary election campaign and also contributed \$1,700 to Spano’s 2018 general election campaign, cycle which means he could have contributed an additional \$1,000 contribution. As a result only \$109,000 of his \$110,000 in loans were excessive contributions.



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1 principal campaign committee.<sup>2</sup> Hunt states that she is a personal friend of Spano who  
2 contributed to Spano's 2018 congressional campaign.<sup>3</sup>

3 Following discussions about Spano's personal financial issues and campaign fundraising  
4 problems, Hunt loaned Spano the following amounts:

<u>Date</u>	<u>Lender</u>	<u>Recipient</u>	<u>Amount</u>
8/9/2018	Karen Hunt	Ross Spano	\$35,000
9/30/2018	Karen Hunt	Ross Spano	\$35,000
		<b>TOTAL</b>	<b>\$70,000</b>

5 Spano executed written promissory notes for each loan, all of which required payment of  
6 a 5% interest rate.<sup>4</sup>

7 **B. Spano Transfers Most of the Hunt Funds to the Committee**

8  
9 Spano immediately used the Hunt funds to make \$164,5000 in candidate loans to the  
10 Committee that were represented as being made from his personal funds.<sup>5</sup>

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<sup>2</sup> Statement of Organization, Ross Spano for Congress (Apr. 18, 2018).

<sup>3</sup> The Committee's disclosure reports indicate that Hunt made a \$1,000 primary election contribution on June 22, 2018, and another \$1,000 general election contribution on October 1, 2018. *See* 2018 July Quarterly Report; 2018 October Quarterly Report, Ross Spano for Congress (Oct. 15, 2018). A review of Florida's contribution database also indicates that Hunt made a total of \$1,500 in contributions to Spano's state campaigns in 2016 (\$500) and 2018 (\$1,000). *See* <https://dos.myflorida.com/elections>.

<sup>4</sup> Spano Aff. ¶18.

<sup>5</sup> *See* 2018 July Quarterly Report; 2018 Pre-Primary Report; 2018 October Quarterly Report; 2018 Post-General Report, Ross Spano for Congress (Jan. 31, 2019) ("Post-General Report"). The Submission states that Spano used the remaining \$15,500 in loan proceeds to cover business and personal expenses. Spano Aff. ¶¶ 15-17.

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<u>Date</u>	<u>Election Cycle</u>	<u>Report</u>	<u>Source</u>	<u>Loan Amount</u>
8/9/2018 <sup>6</sup>	2018 Primary	2018 Pre-Primary	Personal funds	\$32,000
9/30/2018	2018 General	October 2018 Quarterly	Personal funds	\$27,500
			<b>TOTAL</b>	<b>\$59,500</b>

1  
2 Spano used a portion (\$10,500) of the \$70,000 loan proceeds to pay business and other  
3 personal expenses: \$3,000 of the \$35,000 loan amount (August 9<sup>th</sup>); and \$7,500 of the \$35,000  
4 loan amount (September 30<sup>th</sup>)

### 5 C. Sua Sponte Submission and Complaint

6 Beginning December 2, 2018, and thereafter, several newspapers published articles  
7 regarding Spano's potential violations of the Act by using the loan proceeds to make loans to  
8 Spano's Committee.<sup>7</sup> Spano states that this attention caused him to seek outside legal advice  
9 about the permissibility of the loans, and led to the filing of the *sua sponte* submission.<sup>8</sup>

10 On December 28, 2018, Spano repaid Hunt's loans in full including 5% interest totaling  
11 \$71,063.38.<sup>9</sup> Counsel has confirmed that Spano secured a loan from CenterState Bank to repay

<sup>6</sup> While the 2018 Pre-Primary Report notes that the candidate loan was made on August 8, 2018, which would have been a day before the loan was made on August 9, 2018, counsel for Respondents has indicated that Spano inadvertently put the incorrect date on the check to the Committee. Counsel represents that the loan date should be reflected as August 9<sup>th</sup> instead of August 8<sup>th</sup>.

<sup>7</sup> See e.g., <https://floridapolitics.com/archives/282395-ross-spano-admits-he-used-personal-loans-for-campaign/>; <https://www.theledger.com/news/20181202/newly-elected-republican-us-rep-ross-spano-acknowledges-possible-campaign-finance-violations/> (article last accessed on Oct. 15, 2019); <http://www.tampabay.com/florida-politics/buzz/2018/12/01/ross-spano-acknowledges-possible-violation-of-campaign-finance-law/> (article last accessed on Oct. 15, 2019); <https://thehill.com/homenews/campaign/419377-incoming-gop-lawmaker-says-he-may-have-violated-campaign-finance-law> (article last accessed on Oct. 15, 2019). The articles do not specifically state the manner by which they came into possession of the actual submission.

<sup>8</sup> Spano Aff. #1, ¶ 22.

<sup>9</sup> *Id.* ¶ 26.

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1 the Hunt loans as reflected on Spano's 2019 FDS.<sup>10</sup> On August 5, 2019, a Complaint was filed  
2 alleging violations of the Act based on the same set of facts contained in the *sua sponte*  
3 submission.<sup>11</sup> In addition, the Complaint alleged that the Committee's failure to refund or  
4 disgorge the funds it received from Hunt constitutes further violations of the Act.

5 On September 20, 2019, the Committee refunded the \$70,000 used by Spano to make the  
6 candidate loans.<sup>12</sup>

## 7 **II. LEGAL ANALYSIS**

8 A contribution is any gift, subscription, loan, advance, or deposit of money or anything of  
9 value made by any person for the purpose of influencing any election for Federal office.<sup>13</sup> Under  
10 the Act, an individual may not make a contribution to a candidate with respect to any election in  
11 excess of the legal limit, which was \$2,700 per election during the 2017-2018 election cycle.<sup>14</sup>  
12 Any candidate who receives a contribution as defined at 11 C.F.R. part 100, subparts B and C,  
13 obtains any loan, or makes any disbursement, in connection with his or her campaign shall be  
14 considered as having received such contribution, obtained such loan or made such disbursement

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<sup>10</sup> See Financial Disclosure Statement, V. Ross Spano (May 15, 2019) ("FDS #2") located at [http://clerk.house.gov/public\\_disc/financial-pdfs/2018/30004716.pdf](http://clerk.house.gov/public_disc/financial-pdfs/2018/30004716.pdf). Spano reported a new liability in the form of a promissory note dated December 28, 2018, with CenterState Bank for an amount ranging from \$100,000 to \$250,001. *Id.* The timing of the promissory note corresponds to the amount of the loans as well as the time period in which the loans repayments were made. *Id.*

<sup>11</sup> See Compl. at 7-9.

<sup>12</sup> See 2019 October Quarterly Report, Spano for Congress (Oct. 15, 2019).

<sup>13</sup> 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.52(a).

<sup>14</sup> See *Id.* § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1). Further, a candidate committee must report the identity of any person who makes a contribution to the committee during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of \$200 within the election cycle. 52 U.S.C. § 30104(b)(3).

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1 as an agent of his or her authorized committee.<sup>15</sup> In addition, the Act and Commission  
2 regulations further provide that no person may make, and no candidate or candidate's authorized  
3 political committee shall knowingly accept, any contribution that violates the contribution limits  
4 set forth in section 30116.<sup>16</sup>

5 A "loan" includes a guarantee, endorsement, and any other form of security.<sup>17</sup> A loan  
6 that exceeds the contribution limits, or otherwise violates 52 U.S.C. §§ 30116 or 30118, is  
7 unlawful, whether or not it is repaid.<sup>18</sup> A loan to a political committee or a candidate by a  
8 commercial bank is exempt from the definition of contribution, if such loan is made in  
9 accordance with applicable law and in the ordinary course of business.<sup>19</sup>

10 In the present matter, Spano did not use a commercial lender to obtain the loans in  
11 question, but instead took loans from personal friends.<sup>20</sup> Because the Hunt loans were not made

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<sup>15</sup> 52 U.S.C. § 30102(e)(2); 11 C.F.R. §§ 101.2, 102.8(a).

<sup>16</sup> 52 U.S.C. § 30116(f).

<sup>17</sup> 11 C.F.R. § 100.52(b); *see also* 52 U.S.C. § 30101(8)(B)(vii). Each endorser or guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written agreement. 11 C.F.R. §§ 100.52(b)(3), 100.82(c).

<sup>18</sup> *Id.* § 100.52(b).

<sup>19</sup> *Id.* § 100.82(a). A loan only will be deemed to be made in the ordinary course of business if it: "(1) [b]ears the usual and customary interest rate of the lending institution for the category of loan involved; (2) [i]s made on a basis that assures repayment; (3) [i]s evidenced by a written instrument; and (4) [i]s subject to a due date or amortization schedule." A loan is considered "made on a basis that assures repayment" if it is obtained using a perfected security interest in collateral owned by the candidate, the fair market value of the collateral is equal to or greater than the loan amount, and the candidate provides documentation to show that the lending institution has a perfected security interest in the collateral. *Id.*

<sup>20</sup> Even if Spano could satisfy the "commercial lender" requirement, the loans do not satisfy a key requirement of 100.82(a) because they were not made on a "basis that reassures repayment." *Id.* § 100.82(e). For purposes of the section 100.82(a) analysis, it is irrelevant whether the loans meet the remaining requirements of 100.82(a) because they were not obtained from a commercial lender and were not made on the basis that reassures repayment. *Id.* In order for the loans to satisfy this element, they must have been obtained using a perfected security interest in collateral owned by the candidate that meets the requirements of the regulation. *Id.* The

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1 by a commercial lending institution in the ordinary course of business, they are not exempt from  
2 the definition of a “contribution.” As a result, Hunt made excessive contributions to Spano and  
3 the Committee.<sup>21</sup>

4 The Act and Commission regulations allow candidates for federal office to make  
5 unlimited expenditures, including contributions or loans to their principal campaign committees,  
6 as long as such expenditures, contributions or loans are made from their own “personal funds.”<sup>22</sup>  
7 Although the Committee reported receiving \$59,500 in candidate loans, these funds came from  
8 Hunt, rather than from Spano’s personal funds.

9 We also conclude that the \$10,500 loaned to Spano by Hunt that Spano used to pay for  
10 expenses related to his law practice and certain other personal expenses, also constitute excessive  
11 contributions. The Commission’s regulations provide that a third party’s payment of a  
12 candidate’s personal expense shall be deemed a contribution “unless the payment would have

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promissory notes contain no information suggesting any perfected security interest for any of the loans. *See* Suppl. Submission, Attach. (copies of promissory notes).

<sup>21</sup> The Commission has previously sought or found reason to believe in similar situations involving a candidate’s acceptance of personal loans. *See, e.g.*, MURs 7001, 7002, 7003, 7009 and RR 16L-09 (Ted Cruz) (Commission found reason to believe that the Committee failed to properly report \$1,064,000 in loans made to the committee and dismissed allegations that Cruz’ wife made and the committee accepted excessive contributions); MUR 6417 (Huffman) (Commission found reason to believe that candidate and committee violated the Act by accepting excessive contributions in the form of loans from the candidate’s wife, failing to report the proper source of the loan, and failing to file the proper C-1 disclosure report, and that the candidate’s wife violated the Act by accepting excessive contributions).

<sup>22</sup> 11 C.F.R. §§ 110.10, 100.33. “Personal funds” include (1) all assets in which a candidate has legal title or an equitable interest, as well as salary and other earned income from *bona fide* employment;(2) dividends and proceeds from the sale of the candidate’s stocks or other investments; (3) bequests to the candidate;(4) income from trusts established before candidacy; (5) income from trusts established by bequest after candidacy of which the candidate is the beneficiary;( 6) gifts of a personal nature which had been customarily received prior to candidacy; and (7) proceeds from lotteries and similar legal games of chance. 52 U.S.C. § 30101(26); 11 C.F.R. § 100.33.

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1 been made irrespective of the candidacy.”<sup>23</sup> In this instance, Hunt stated in her affidavit that her  
2 motivation in making the loans was to support Spano’s candidacy. <sup>24</sup> Hunt states that she did not  
3 know if “all funds were to be used for the campaign or if some were to be used for personal  
4 needs.”<sup>25</sup> Accordingly, the \$10,500 in funds loaned to Spano that were used for business and  
5 personal expenses are contributions.

6 The Commission finds reason to believe that Karen L. Hunt violated 52 U.S.C.  
7 § 30116(a) by making excessive contributions.<sup>26</sup>

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<sup>23</sup> 11 C.F.R. § 113.1(g)(6); *see also* Explanation and Justification, Third Party Payments of Personal Use Expenses, 60 Fed. Reg. 7862, 7871 (Feb. 9, 1995) (“If a third party pays for the candidate's personal expenses, but would not ordinarily have done so if that candidate were not running for office, the third party is effectively making the payment for the purpose of assisting that candidacy.”). *See, e.g.*, Moran SOR at 4; Clinton SOR at 3. The other factors noted in the analysis were: (1) whether receipt of funds freed up other funds of the candidate for campaign purposes; and (2) whether the candidate would have more time to spend on the campaign instead of pursuing their usual employment. *Id.*

<sup>24</sup> Hunt Aff. ¶ 4.

<sup>25</sup> *Id.*

<sup>26</sup> Hunt contributed \$1,000 towards Spano’s 2018 primary election campaign and another \$1,000 towards Spano’s 2018 general election campaign which means she could have contributed an additional \$1,700 per election cycle, or a total of \$3,400. As a result only \$66,600 of her \$70,000 in loans to Spano were excessive contributions.