



**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

February 17, 2023

**Via Electronic Mail**

Vincent Ross Spano, Esq.

Plant City, FL 33565

RE: MUR 7629 (merged with former  
Pre-MUR-619)  
Vincent Ross Spano  
Ross Spano for Congress and  
Robert Phillips, III in his official  
capacity as treasurer

Dear Mr. Spano:

On November 30, 2018, you and Ross Spano for Congress and Robert Phillips, III, in his official capacity as treasurer (“the Committee”) made a *sua sponte* submission, through your former counsel, notifying the Federal Election Commission (the “Commission”) of possible violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the “Act”). Following discussions with the Commission’s Office of General Counsel, the original *sua sponte* submission was supplemented with additional information in 2018 and 2019.

On August 8, 2019, you and the Committee were notified, through your former counsel, of a complaint filed against you, alleging violations of certain sections of the Act and Commission regulations. A copy of the complaint was provided to your counsel at that time.

On February 9, 2023, the Commission found reason to believe that Vincent Ross Spano violated 52 U.S.C. § 30116(f) by accepting excessive contributions. In addition, the Commission found reason to believe that the Committee violated 52 U.S.C. §§ 30116(f) and 30104(b)(3) by accepting excessive contributions and misreporting loans and violated 11 C.F.R. § 103.3(b)(3) by failing to make timely refunds of excessive contributions. The Factual and Legal Analysis, which formed a basis for the Commission’s finding, is enclosed for your information.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission’s regulations, but is a voluntary step in the enforcement process that the Commission is offering as a way to resolve

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this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your client violated the law.

If you and the Committee are interested in engaging in pre-probable cause conciliation, please contact Kimberly D. Hart, the attorney assigned to this matter, at (202) 694-1618 or (800) 424-9530, or by electronic mail at [khart@fec.gov](mailto:khart@fec.gov) within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within thirty (30) days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). It may be possible to extend the period for pre-probable cause conciliation if you and the committee will agree to toll the applicable statute of limitations. Conversely, if you or the Committee are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at <http://www.fec.gov/respondent.guide.pdf>.

We have also enclosed a brief description of the Commission's procedures for handling possible violations of the Act. In addition, please note that the Committee has a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519. This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation

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to the public, it may share information on a confidential basis with other law enforcement agencies.<sup>1</sup>

We look forward to your response.

On behalf of the Commission,



Dara J. Lindenbaum  
Chair

cc: Robert Phillips, III  
Treasurer  
Ross Spano for Congress  
10101 Bloomingdale Avenue  
Suite 201  
Riverview, Florida 33578

Enclosures:  
Factual and Legal Analysis

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<sup>1</sup> The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

**MUR 7629**

**RESPONDENTS:**

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

**I. INTRODUCTION**

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

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

## II. FACTUAL BACKGROUND

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

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

Following discussions about Spano's personal financial issues and campaign fundraising 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
		<b>TOTAL</b>	<b>\$180,000</b>

<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>.

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

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

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

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<sup>4</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 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.*

<sup>5</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>6</sup> Spano Aff. ¶18.

<sup>7</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.

<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>

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

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

The U.S. House Committee on Ethics requires an individual who qualifies as a candidate during an election (even-numbered) year to file a FDS within 30 days of becoming a candidate or 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.*

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

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



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

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

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

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

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

On September 20, 2019, the Committee refunded \$110,000 of the \$164,500 used by Spano to make the candidate loans.<sup>27</sup> However, the counsel for the Committee has indicated that 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).

## II. LEGAL ANALYSIS

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

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

A "loan" includes a guarantee, endorsement, and any other form of security.<sup>33</sup> A loan 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).

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

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

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

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

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

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

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

The Complaint alleges that Spano and the Committee failed to timely refund and/or 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.

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

The Committee was aware of the impermissibility of the Carreno and Hunt loans no later than December 3, 2018, the date on which it filed its *sua sponte* submission. Accordingly, the Committee was required to refund or disgorge the funds by no later than January 3, 2019.<sup>47</sup> Although Spano repaid Carreno and Hunt personal loans in December 2018, the Committee has 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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nine months after the time proscribed by the Commission regulations. Accordingly, we recommend that Ross Spano for Congress and Robert Phillips, III violated 11 C.F.R. § 103.3(b)(3) by failing to timely refund the excessive contributions.