

1 **FEDERAL ELECTION COMMISSION**

2 **FIRST GENERAL COUNSEL'S REPORT**

3 **MUR 8044**

4 DATE COMPLAINT FILED: August 2, 2022

5 DATE OF NOTIFICATION: August 8, 2022

6 DATE OF LAST RESPONSE: February 5, 2023

7 DATE ACTIVATED: March 22, 2023

8 EXPIRATION OF SOL: June 6-July 15, 2027

9 ELECTION CYCLE: 2022

10  
11 **COMPLAINANT:**

12 Foundation for Accountability and Civic Trust  
Kendra Arnold

13 **RESPONDENTS:**

14 Taddeo for Congress and Shelby Green in her  
15 official capacity as treasurer  
16 Annette Taddeo for Governor  
Annette Taddeo

17 **RELEVANT STATUTES  
18 AND REGULATIONS:**

19 52 U.S.C. § 30101(8)

20 52 U.S.C. § 30104(b)

21 52 U.S.C. § 30125(e)(1)(A)

22 11 C.F.R. § 100.52(d)

23 11 C.F.R. § 110.3(d)

24 **INTERNAL REPORTS CHECKED:**

Disclosure Reports

25 **FEDERAL AGENCIES CHECKED:**

None

26 **I. INTRODUCTION**

27 The Complaint alleges that Annette Taddeo's 2022 U.S. House of Representatives  
28 principal campaign committee, Taddeo for Congress and Shelby Green in her official capacity as  
29 treasurer (the "Federal Committee"), accepted a prohibited contribution from Taddeo's 2022  
30 gubernatorial campaign, Annette Taddeo for Governor (the "State Committee"), in violation of  
31 the Federal Election Campaign Act of 1971, as amended (the "Act"). Specifically, the  
32 Complaint alleges that the Federal Committee used video footage in an advertisement that was  
33 previously used in a State Committee advertisement. The Complaint further alleges that the

1 Federal Committee never reported any disbursement to, nor contributions from, the State  
2 Committee on its reports filed with the Commission.

3 For the reasons below, we recommend that the Commission find reason to believe that  
4 (1) Taddeo and the Federal Committee violated 52 U.S.C. § 30125(e) and 11 C.F.R. § 110.3(d)  
5 by receiving an impermissible transfer of a state committee's asset; (2) the State Committee  
6 violated 11 C.F.R. § 110.3(d) by making an impermissible transfer of an asset to a federal  
7 committee; and (3) the Federal Committee violated 52 U.S.C. § 30104(b) by failing to disclose  
8 an in-kind contribution or timely disclose a disbursement. We further recommend that the  
9 Commission authorize compulsory process to determine the full extent of any potential  
10 violations of the Act.

## 11 **II. FACTUAL BACKGROUND**

12 Annette Taddeo is a former Florida state senator and was a candidate for the Democratic  
13 nomination in the 2022 Florida gubernatorial election from October 2021 through June 2022.<sup>1</sup>  
14 The State Committee was Taddeo's state political committee for her 2022 gubernatorial  
15 campaign.<sup>2</sup> On June 6, 2022, Taddeo withdrew from the gubernatorial election and entered the  
16 race for the U.S. House of Representatives for Florida's 27th Congressional District.<sup>3</sup> The

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<sup>1</sup> Compl. at 1-2 (Aug. 2, 2022); Annette Taddeo & Taddeo for Congress Resp. at 1-2 (Sept. 28, 2022) [hereinafter Joint Resp.]; Annette Taddeo, Statement of Candidate (Oct. 18, 2021). Taddeo's Statement of Candidate for her gubernatorial campaign is available on the Florida Division of Elections website,

*See Campaign Documents Search*, FLA. DIV. OF ELECTIONS, <https://dos.elections.myflorida.com/campaign-docs/default.aspx> (search for "Taddeo" under "Account Name" "CAN — Candidate" under "Account Type" and "Statement of Candidate" under "Form Desc.") (last visited Nov. 16, 2023).

<sup>2</sup> Annette Taddeo for Governor Resp. (Feb. 5, 2023) [hereinafter State Comm. Resp.].

<sup>3</sup> Annette Taddeo, Amended Statement of Candidacy (June 6, 2022), <https://docquery.fec.gov/pdf/233/202206069514725233/202206069514725233.pdf>; Compl. at 1-2; Joint Resp. at 1-2.

1 Federal Committee is Taddeo's principal campaign committee for her 2022 U.S. House of  
2 Representatives campaign.<sup>4</sup>

3 On October 20, 2021, the State Committee released a campaign advertisement entitled  
4 "Fighting Spirit," announcing Taddeo's campaign for Florida Governor.<sup>5</sup> On June 6, 2022, when  
5 Taddeo withdrew from the Florida gubernatorial election, the Federal Committee released a  
6 campaign advertisement, "Ready to Flip FL-27," announcing Taddeo's campaign for the U.S.  
7 House of Representatives for Florida's 27th Congressional District.<sup>6</sup>

8 The first minute and ten seconds of "Ready to Flip FL-27" is identical to the first minute  
9 and ten seconds of "Fighting Spirit," and the remaining one minute of "Ready to Flip FL-27"  
10 contains other footage and content from "Fighting Spirit."<sup>7</sup> According to the media vendor  
11 responsible for producing both advertisements, the Federal Committee's "Ready for FL-27"  
12 "used approximately 90 seconds of the video footage created during the [State Committee's]  
13 campaign announcement production shoot, plus a few additional clips and sound bites."<sup>8</sup>

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<sup>4</sup> Taddeo for Congress, Amended Statement of Organization (June 6, 2022), <https://docquery.fec.gov/pdf/633/202206069514724633/202206069514724633.pdf>.

<sup>5</sup> Senator Annette Taddeo (@senatorannettetaddeo7525), *Annette Taddeo for Florida Governor — Fighting Spirit*, YOUTUBE (Oct. 20, 2021) [hereinafter Fighting Spirit Video], [https://www.youtube.com/watch?v=vkfNA7E\\_Eoic](https://www.youtube.com/watch?v=vkfNA7E_Eoic)  
*see* Compl. at 2 (citing Fighting Spirit Video).

<sup>6</sup> Senator Annette Taddeo (@senatorannettetaddeo7525), *Annette Taddeo Is Ready to Flip FL-27*, YOUTUBE (June 6, 2022) [hereinafter Ready to Flip FL-27 Video], <https://www.youtube.com/watch?v=l3rRtygbZgU>  
*see* Compl. at 2 (citing Ready to Flip FL-27 Video; Jim Turner, *Annette Taddeo Withdraws as a Democratic Candidate for Governor*, WUSF PUB. MEDIA (June 7, 2022, 5:33 AM), <https://wusfnews.wusf.usf.edu/politics-issues/2022-06-07/annette-taddeo-withdraws-democratic-candidate-florida-governor>).

<sup>7</sup> Compare Ready to Flip FL-27 Video, with Fighting Spirit Video. *See also* Compl. at 2-4 (including screenshots of both videos and alleging that "[t]he majority of the video footage [in Ready to Flip FL-27] was the same as that from [Fighting Spirit], and in fact the first minute and beyond are identical"); *id.*, Ex. A (attaching examples of the same video footage in each advertisement).

<sup>8</sup> Joint Resp., Ex. B ¶ 3 (Patrick Kennedy Decl. (Sept. 28, 2022)).

1           According to Taddeo and the Federal Committee, the State Committee paid a media  
2 vendor, AL Media, \$34,768 for the video shoot and production of “Fighting Spirit.”<sup>9</sup> The  
3 Federal Committee did not report an in-kind contribution from or a disbursement to either the  
4 State Committee or AL Media on its first disclosure report filed with the Commission, nor did  
5 the State Committee report any receipts from the Federal Committee during that timeframe.<sup>10</sup>

6           The Federal Committee did not report a disbursement to the State Committee until it filed  
7 its 12-Day Pre-Primary Report with the Commission on August 12, 2022, on which it reported a  
8 disbursement of \$3,000 on August 2, 2022, to the State Committee for “Video Production  
9 Footage.”<sup>11</sup> The date of the disbursement is noteworthy, as the Federal Committee apparently  
10 paid for the footage nearly two full months after it released the advertisement into which the

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<sup>9</sup> Joint Resp. at 1-2; *id.*, Ex. B ¶ 5 (Patrick Kennedy Decl. (Sept. 28, 2022)). The Joint Response does not state when the State Committee’s purported payment to AL Media occurred. *Id.* The Florida Division of Elections campaign finance database reflects two disbursements from the State Committee to AL Media: \$10,000 on April 22, 2022, and \$59,290 on June 6, 2022. Both disbursements were made at least six months after “Fighting Spirit” was released, and neither correspond to the exact amount Taddeo and the Federal Committee assert that the State Committee paid for the video shoot and production, although one is larger than the purported payment and therefore may include it.

<sup>10</sup> See Taddeo for Congress, 2022 July Quarterly Report (July 15, 2022); Taddeo for Congress, Amended 2022 July Quarterly Report (Aug. 1, 2022); Compl. at 4 & nn.10-11. See also *Campaign Finance Database, Contributions Records*, FLA. DEP’T OF STATE, DIV. OF ELECTIONS, <https://dos.elections.myflorida.com/campaign-finance/contributions/> (last visited Nov. 16, 2023) (search for “All” under “Election Year,” “Annette Taddeo” under “Candidate Search,” and limit the “Date Range” from Jan. 1, 2022 through July 31, 2022).

<sup>11</sup> Taddeo for Congress, Amended Pre-Primary Report at 101 (Aug. 12, 2022); see also Joint Resp. at 2 (“On August 2, 2022, the [Federal] Committee paid the [State Committee] \$3,000 for the fair market value for a license to use the original footage from the production shoot, which represented the pro-rated value of the small amount of footage used.”); *id.*, Ex. A (attaching check copy with memo entry “Production Costs — Sale to Taddeo for Congress); *id.*, Ex. B ¶ 4 (Patrick Kennedy Decl. (Sept. 28, 2022)) (“On August 2, 2022, [the Federal Committee] paid [the State Committee] \$3,000 for the license to use the original video footage from the production shoot in the new congressional announcement video.”); see also *Campaign Finance Database, Expenditures Records*, FLA. DEP’T OF STATE, DIV. OF ELECTIONS, <https://dos.elections.myflorida.com/campaign-finance/expenditures/> (last visited Nov. 16, 2023) (search for “All” under “Election Year” and “Annette Taddeo” under “Candidate Search”) (reflecting \$3,000 expenditure by State Committee to Federal Committee on August 4, 2022).

1 footage was incorporated. This is also the date the Complaint in this matter was received by the  
2 Office of General Counsel and four days after the Complainant published the Complaint online.<sup>12</sup>

3 The Complaint alleges that Taddeo and the Federal Committee accepted a prohibited  
4 contribution from the State Committee in the form of the video footage used in “Fighting Spirit”  
5 that the State Committee transferred to the Federal Committee for its use in “Ready to Flip FL-  
6 27.”<sup>13</sup> The Complaint further alleges that the Federal Committee violated the Act’s reporting  
7 requirements by failing to report disbursements to the State Committee relating to the cost of the  
8 video footage.<sup>14</sup>

9 Taddeo and the Federal Committee acknowledge that video footage from the State  
10 Committee’s “Fighting Spirit” advertisement was used in the Federal Committee’s “Ready to  
11 Flip FL-27” campaign announcement.<sup>15</sup> However, Taddeo and the Federal Committee contend  
12 that the Federal Committee “paid fair market value for that footage” because it paid \$3,000 to the  
13 State Committee on August 2, 2022, “for a license to use the original footage from the  
14 production shoot, which represented the pro-rated value of the small amount of footage used.”<sup>16</sup>  
15 Taddeo and the Federal Committee submit a sworn declaration from the Chief Financial Officer  
16 at AL Media, the media vendor responsible for producing both the State Committee’s “Fighting

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<sup>12</sup> See Compl. at 1. The Complainant appears to have released a press release about the Complaint dated July 29, 2022. See Press Release, Found. for Accountability & Civic Tr., FACT Files FEC Complaint Against FL Congressional Candidate Annette Taddeo (July 29, 2022), <https://www.factdc.org/post/fact-files-fec-complaint-against-fl-congressional-candidate-annette-taddeo>. There appears to have been at least one press report about the filing of the Complaint before it was officially stamped by CELA as received. See Gabe Kaminsky, *EXCLUSIVE: Florida Dem Candidate May Have Illegally Transferred Campaign Assets, Complaint Alleges*, DAILY CALLER (July 29, 2022, 2:41 PM), <https://dailycaller.com/2022/07/29/florida-dem-annette-taddeo-campaign-assets-federal-election-commission/>.

<sup>13</sup> Compl. at 5-6.

<sup>14</sup> See *id.* at 6.

<sup>15</sup> Joint Resp. at 1.

<sup>16</sup> *Id.* at 1-2.

1 Spirit” and the Federal Committee’s “Ready to Flip FL-27,” who attests that the \$3,000 the  
2 Federal Committee paid for a “small portion of [the] original [State Committee] shoot  
3 footage . . . should be considered fair market value for the pro-rated value of the original  
4 footage.”<sup>17</sup>

5 Taddeo and the Federal Committee argue that the transfer of the video footage was  
6 therefore permissible because the Federal Committee paid the fair market value or usual and  
7 normal charge for the use of that asset.<sup>18</sup> Alternatively, Taddeo and the Federal Committee  
8 argue that the Commission should exercise its prosecutorial discretion and dismiss the Complaint  
9 given the *de minimis* amount at issue.<sup>19</sup>

10 The State Committee responds that it was “properly paid by the [Federal Committee] for  
11 the use of the” video footage and attaches a copy of the State Committee’s state disclosure report  
12 documenting the \$3,000 receipt on August 2, 2022.<sup>20</sup>

13 The State Committee’s campaign finance disclosures filed with the Florida Division of  
14 Elections show that the State Committee received contributions from individuals, corporations,

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<sup>17</sup> *Id.*, Ex. B (Patrick Kennedy Decl. (Sept. 28, 2022)).

<sup>18</sup> *Id.* at 2-3.

<sup>19</sup> *Id.* at 4.

<sup>20</sup> State Comm. Resp.

1 and labor unions that do not comply with the Act's limitations, prohibitions, and reporting  
2 requirements.<sup>21</sup>

### 3 **III. ANALYSIS**

#### 4 **A. Applicable Law**

5 The Act and Commission regulations define “contribution” as “any gift, subscription,  
6 loan, advance, or deposit of money or anything of value made by any person for the purpose of  
7 influencing any election for Federal office.”<sup>22</sup> “[A]nything of value” includes in-kind  
8 contributions, such as “the provision of any goods or services without charge or at a charge that  
9 is less than the usual and normal charge.”<sup>23</sup> Commission regulations define “usual and normal  
10 charge” as “the price of those goods in the market from which they ordinarily would have been  
11 purchased at the time of the contribution,” or the charge for services “at a commercially  
12 reasonable rate prevailing at the time the services were rendered.”<sup>24</sup> If a committee pays fair  
13 market value for a good or service, then the transaction is not considered a contribution.<sup>25</sup> “If  
14 goods or services are provided at less than the usual and normal charge, the amount of the in-  
15 kind contribution is the difference between the usual and normal charge for the goods or services  
16 at the time of the contribution and the amount charged the political committee.”<sup>26</sup>

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<sup>21</sup> *Campaign Finance Database, Contributions Records*, FLA. DEP'T OF STATE, DIV. OF ELECTIONS, <https://dos.elections.myflorida.com/campaign-finance/contributions/> (last visited Nov. 16, 2023) (search for “All” under “Election Year,” “Annette Taddeo” and “Governor” under “Candidate Search,” and remove the limit on the number of records returned).

<sup>22</sup> 52 U.S.C. § 30101(8)(A)(i); *accord* 11 C.F.R. § 100.52(a); *see also* 52 U.S.C. § 30118(b)(2) (adding that “contribution” includes “any direct or indirect payment, . . . gift of money, or any services, or anything of value”).

<sup>23</sup> 11 C.F.R. § 100.52(d)(1).

<sup>24</sup> *Id.* § 100.52(d)(2).

<sup>25</sup> *See id.* § 100.52(d)(1).

<sup>26</sup> *Id.*

1           The Act and Commission regulations prohibit federal candidates, federal officeholders,  
2           their agents, and entities directly or indirectly established, financed, maintained, or controlled by  
3           federal candidates or officeholders from soliciting, receiving, directing, transferring, or spending  
4           funds in connection with an election unless the funds are subject to the limitations, prohibitions,  
5           and reporting requirements of the Act.<sup>27</sup> Under Florida law, candidates in state elections may  
6           accept contributions from corporations and unions.<sup>28</sup> Florida law permits contributions to  
7           candidates for statewide offices in amounts up to \$3,000 for any election.<sup>29</sup>

8           The Commission's regulations explicitly prohibit "[t]ransfers of funds or assets from a  
9           candidate's campaign committee or account for a nonfederal election to his or her principal  
10          campaign committee or other authorized committee for a federal election."<sup>30</sup> The Commission  
11          has explained that this prohibition on all transfers from a candidate's state or local committee to  
12          the candidate's federal committee is intended to prevent a federal committee's indirect use of  
13          "soft money" raised in compliance with state, but not federal, law.<sup>31</sup> The transfer of a nonfederal

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<sup>27</sup> 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. § 300.61.

<sup>28</sup> See FLA. STAT. §§ 106.08, 106.11 (2022); see also *id.* § 106.011(14) (including "corporation[s]" in the definition of "[p]erson" under state campaign finance statutes).

<sup>29</sup> *Id.* § 106.08(1)(a)(1).

<sup>30</sup> 11 C.F.R. § 110.3(d). See also Factual & Legal Analysis ("F&LA") at 4, MUR 5426 (Dale Schultz for Congress, *et al.*) ("Commission regulations specifically prohibit transfers of funds or assets from a candidate's account for a non-federal election to his or her principal campaign committee for a federal election."); F&LA at 7-8, MUR 5722 (Friends for Lauzen, *et al.*) (finding state committee made an in-kind contribution to a federal candidate for testing-the-waters expenses despite fact that state committee had sufficient permissible funds to cover the expenses based on prohibition in 11 C.F.R. § 110.3(d)); F&LA at 3, MUR 6219 (Kuhl for Congress) (stating that, in addition to state law allowing contributions in amounts and from sources not subject to the Act's limitations, "none of the state campaign funds at issue were subject to the Act's reporting provisions"); F&LA at 4, MUR 6253 (Trey Gowdy for Congress, *et al.*) (same). In MUR 7337 (Debbie Lesko, *et al.*), the Commission found reason to believe a federal candidate and her state committee violated 52 U.S.C. § 30125(e)(1)(A) by financing an independent expenditure-only political committee even though the relevant funds did not violate the Act's source prohibitions and contribution limits because, *inter alia*, "the nature of the funds and the funds being subject to the Act's reporting requirements are separate requirements." F&LA at 5-9, MUR 7337 (Debbie Lesko, *et al.*).

<sup>31</sup> See Transfers of Funds from State to Federal Campaigns, 58 Fed. Reg. 3474, 3474-75 (Jan. 8, 1993) [hereinafter Transfer of Funds E&J] (explaining that the Commission was adopting a total prohibition in this circumstance because of the practical difficulty in linking or otherwise accounting for federally permissible funds



1 committee's assets to the campaign committee of a candidate for federal office is permissible,  
2 however, where the federal committee pays the fair market value or the "usual and normal  
3 charge" for the use of such assets.<sup>32</sup> The Commission has found reason to believe and has  
4 subsequently conciliated matters where the candidate's federal committee does not pay the state  
5 committee for goods and services used by the federal committee.<sup>33</sup> Accordingly, a federal

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available for transfer); *see also* F&LA at 3-4, MUR 7106 (Chappelle-Nadal for Congress) (describing 11 C.F.R. § 110.3(d) as "an extension of the Act's soft money ban"); First Gen. Counsel's Rpt. ("First GCR") at 10-11 & Certification ("Cert.") ¶¶ 1-2 (Feb. 11, 2005), MUR 5406 (Hynes for Senate) (approving a reason to believe recommendation that a dual candidate's federal and state committees violated 11 C.F.R. § 110.3(d) by making a direct contribution from a state to federal committee and requiring disgorgement of contribution amount to U.S. Treasury).

<sup>32</sup> Transfer of Funds E&J, 58 Fed. Reg. at 3475 ("[T]he rule should not be read to proscribe the sale of assets by the state campaign committee to the federal campaign committee, so long as those assets are sold at fair market value."); *see also, e.g.*, Advisory Opinion 1992-19 at 2 (Mike Kreidler for Congress) (approving request to permit the lease of state campaign committee's computer equipment to candidate's federal campaign committee); Advisory Opinion 2014-06 at 8 (Ryan, *et al.*) (finding that a candidate could rent his committee's mailing list at fair market value to promote a book); Statement of Reasons ("SOR"), Comm'rs. Petersen, Bauerly, Hunter, McGahn & Weintraub at 5-6, MUR 6216 (Coakley for Senate, *et al.*) (explaining a finding of no reason to believe an impermissible transfer occurred where a candidate's federal committee paid her state committee for assets including fundraising database, website redesign, domain names, and promotional materials because there was "no information to suggest that the amount paid . . . for the assets was not fair market value"); F&LA at 4-6, MURs 6474, 6534 (Citizens for Josh Mandel, *et al.*) (finding no reason to believe an impermissible transfer occurred where a candidate's federal committee used a website domain name of his state committee because federal committee hired a third party to coordinate an arm's length deal for state committee's website and domain name and there was no information to suggest the transfer was provided for less than its fair market value).

<sup>33</sup> *See, e.g.*, Conciliation Agreement ("CA") ¶¶ IV.8-9, V.1, MUR 5426 (Dale Schultz for Congress, *et al.*) (concerning campaign worker expenses); CA ¶¶ IV.10-11, V.1-2, MUR 5646 (Cohen for N.H.) (concerning start-up expenses); CA ¶¶ IV.4-5, V.1, MUR 6257 (John Callahan, *et al.*) (concerning feasibility research); CA ¶¶ IV.6-7, 12-13, V.2-4, MUR 6267 (Jonathan Paton for Congress, *et al.*) (concerning polling and survey costs); CA ¶¶ IV.7, V.1-3, MUR 7076 (Richard Tisei, *et al.*) (concerning polling and fundraising analysis); *see also* F&LA at 4, 6, MUR 5636 (Russ Diamond) (finding reason to believe that a candidate and his state committee violated 11 C.F.R. § 110.3(d) where, *inter alia*, the state committee paid for website-related expenses that featured both federal and state campaigns and the pro-rated reimbursement to the state committee appeared inadequate and no basis for the calculation of the pro-rated portion was provided).

1 committee must pay the usual and normal charge for use of the asset to the proper owner,  
 2 whether that is the state committee, the candidate, or a third-party vendor.<sup>34</sup>

3 The Act also requires committee treasurers to file reports of receipts and disbursements.<sup>35</sup>  
 4 These reports must include, *inter alia*, the identification of each person who makes a contribution  
 5 or contributions that have an aggregate amount or value in excess of \$200 during an election  
 6 cycle together with the date and amount of any such contribution.<sup>36</sup>

7 **B. The Commission Should Find Reason to Believe That Respondents Violated**  
 8 **the Act's Asset Transfer and Disclosure Requirements by Transferring an**  
 9 **Asset from the State Committee to the Federal Committee for Less Than**  
 10 **Fair Market Value and Failing to Timely Report the Transaction**

11 The Complaint alleges that Taddeo and the Federal Committee accepted a prohibited and  
 12 unreported contribution from the State Committee when the Federal Committee used video  
 13 footage in "Ready to Flip FL-27" that was previously used in the State Committee's "Fighting  
 14 Spirit" without paying the State Committee for the cost of the video footage.<sup>37</sup> Respondents do

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<sup>34</sup> See 11 C.F.R. § 100.52(d). Compare F&LA at 4-6, MUR 6784 (Lizbeth Benacquisto for Congress, *et al.*) (finding no reason to believe a federal committee's use of images used in state campaign advertisement resulted in a violation where the federal committee provided copies of invoices documenting payments to the vendor, which retained ownership of the images, and there was no information indicating that the payments were below the usual and normal charges), and F&LA at 10-11, MUR 6218 (Ball4NY, *et al.*) (finding no reason to believe a federal committee had not paid the usual and normal charge for use of photographs of state officeholder and federal candidate where the committee's treasurer averred that the federal committee purchased the rights to the photographs from the state legislature and provided supporting documentation and there was no information to the contrary), and SOR at 2, Comm'rs Walther, Petersen, Bauerly, Hunter, & Weintraub, MUR 5964 (Schock for Congress, *et al.*) (dismissing, in an exercise of prosecutorial discretion, allegations regarding a federal committee's use of footage of state officeholder and federal candidate where the federal committee claimed it paid the vendor for use rights and for the production of DVDs containing the footage), with F&LA at 2-4, 6-9, MUR 6792 (Sean Eldridge for Congress, *et al.*) (finding reason to believe that video footage a committee received from a corporation without payment resulted in a violation). See also SOR, Comm'rs. Lindenbaum, Cooksey, Dickerson & Trainor at 5-6, MUR 7938 (Greitens for US Senate) (finding no reason to believe where a license for use of a website was documented by a contemporaneous licensing agreement executed between the committee in question and the candidate, who owned the website).

<sup>35</sup> 52 U.S.C. § 30104(a); 11 C.F.R. § 104.3.

<sup>36</sup> 52 U.S.C. § 30104(b)(3)(A); 11 C.F.R. § 104.3(a)(4).

<sup>37</sup> Compl. at 4-6.

1 not dispute that the video footage in “Ready to Flip FL-27” was originally produced for the State  
2 Committee’s “Fighting Spirit”; rather, Respondents contend the \$3,000 the Federal Committee  
3 paid to the State Committee on August 2, 2022, represented the fair market value for its use of  
4 the video footage.<sup>38</sup> Taddeo and the Federal Committee attach to their Response a declaration  
5 from AL Media’s Chief Financial Officer asserting that the “pro-rated value of th[e] footage  
6 [used in ‘Ready to Flip FL-27’] was valued at \$3,000,” but the declaration does not articulate or  
7 otherwise explain the basis for that valuation.<sup>39</sup> Importantly, the declaration is of limited value  
8 here because the declarant specifically states that the “pro-rated value of this footage was valued  
9 at \$3,000,” and avoids articulating what role, if any, he had in the footage’s valuation.<sup>40</sup>

10 While the Commission has found no reason to believe in asset-transfer matters where the  
11 respondents used third-party brokers or vendors to effectuate the transfer at fair market value or  
12 where there was no information to suggest the transfer was provided for less than fair market  
13 value, the Commission has generally looked for some degree of support for the proposition that  
14 an asset transfer was for fair market value.<sup>41</sup> Specifically, the Commission has previously found  
15 reason to believe in state-committee-asset-transfer matters where it was unclear whether the

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<sup>38</sup> Joint Resp. at 1-2 (acknowledging use of “footage obtained from a production shoot paid for by the [State Committee]” and asserting the \$3,000 reflected “fair market value for a license to use the original footage from the production shoot, which represented the pro-rated value of the small amount of footage used”); *id.*, Ex. B (Patrick Kennedy Decl. (Sept. 28, 2022)) (acknowledging the Federal Committee used 90 seconds of video footage and additional clips and sound bites from the State Committee’s production shoot); State Comm. Resp. (“The [State Committee] was properly paid by the [Federal Committee] for the use of the images cited in the initial complaint.”).

<sup>39</sup> See Joint Resp., Ex. B ¶ 5 (Patrick Kennedy Decl. (Sept. 28, 2022)).

<sup>40</sup> Joint Resp. at 2; *id.*, Ex. B ¶ 3 (Patrick Kennedy Decl. (Sept. 28, 2022)).

<sup>41</sup> See, e.g., F&LA at 4-6, MURs 6474, 6534 (Citizens for Josh Mandel, *et al.*) (finding no reason to believe where a candidate’s federal committee used the website domain of his state committee because federal committee hired a third party to coordinate an arm’s length deal for state committee’s website and domain name and there was no information to suggest the transfer was provided for less than its fair market value); SOR, Comm’rs. Petersen, Bauerly, Hunter, McGahn & Weintraub at 5-6, MUR 6216 (Coakley for Senate, *et al.*) (finding no reason to believe where a candidate’s federal committee paid her state committee for assets including a fundraising database, website redesign, domain names, and promotional materials because there was “no information to suggest that the amount paid . . . for the assets was not fair market value”).

1 purported *pro rata* calculation for payments to the state committee for the federal committee's  
2 use of the asset accurately represented the fair market value or usual and normal charge for the  
3 asset.<sup>42</sup>

4 In this matter, neither the Joint Response nor its attached declaration from the media  
5 vendor attempt to explain the basis for the purported \$3,000 “pro-rated value” of the video  
6 footage used by the Federal Committee in “Ready to Flip FL-27.” At no point do Respondents  
7 definitively state who made the valuation at issue or when it was made.<sup>43</sup> Although the decision  
8 of whether to purchase a limited license or full ownership of footage would seem to be essential  
9 to determining the valuation of the asset transferred, even that aspect of the transaction remains  
10 unclear, with no party explaining why the Federal Committee's filings and contemporaneous  
11 documentation seem to show an intent to purchase the actual footage, while Respondents'  
12 explanations and supporting declaration in response to the Complaint assert that the Federal  
13 Committee purchased only a license to use the footage.<sup>44</sup> Given the incomplete and conflicting

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<sup>42</sup> See, e.g., F&LA at 5, MUR 6257 (John Callahan, *et al.*) (“[I]t is unclear on what basis the Federal Committee calculated its pro-rated share of the research that it purchased. If the Federal Committee used the entire file that [the vendor] compiled for the [local committee] . . . , then the [pro-rated amount] that the Federal Committee paid for the research . . . may not have been the usual and normal charge for that research.”); F&LA at 4, MUR 5636 (Russ Diamond) (finding an in-kind contribution by a state committee to a federal committee in the form of campaign website expenditures where the candidate “d[id] not describe the basis for [the claimed *pro rata*] calculation and the amount seems inadequate given that both campaigns appear to have been featured in equal proportions”); see also F&LA at 7-8, MURs 7628, 7636, 7992 (Kris Kobach, *et al.*) (finding reason to believe an in-kind corporate contribution was made in connection with a mailing list provided at less than the usual and normal charge where, although an affidavit was provided attesting to payment at the market rate, “the available information indicates that the . . . rental price was significantly below market rate, Respondent has been unable to articulate how the rate [paid] was determined, and [the parties] were on both sides of the rental transaction”).

<sup>43</sup> See Joint Resp., Ex. B ¶ 5 (Patrick Kennedy Decl. (Sept. 28, 2022)) (“[T]he pro-rated value of this footage was valued at \$3,000.”).

<sup>44</sup> Compare Taddeo for Congress, Amended Pre-Primary Report at 101 (Aug. 12, 2022), and Joint Resp., Ex A, with Joint Resp. at 2, and Joint Resp., Ex. B ¶ 4 (Patrick Kennedy Decl. (Sept. 28, 2022)).

1 information, significant questions remain as to whether the Federal Committee purchased the  
2 footage for its usual and normal charge.

3           The timing of the payment is also relevant: the Federal Committee's \$3,000 payment to  
4 the State Committee was not made until August 2, 2022, approximately two months after Taddeo  
5 debuted "Ready to Flip FL-27" on June 6, 2022; four days after the Complainant made the  
6 Complaint public on July 29, 2022, the date on the Complaint itself; and the same day the  
7 Complaint was marked received by the Office of General Counsel.<sup>45</sup> This timing raises two  
8 concerns. First, it casts doubt on any objective valuation of the footage because the footage itself  
9 was in use long before the Federal Committee paid for it. Second, it suggests the Federal  
10 Committee made the payment in response to the Complaint rather than as part of a *bona fide*  
11 negotiated transaction for the usual and normal charge.

12           Respondents' chief apparent justification for the \$3,000 valuation is that the 90 seconds  
13 of produced video footage was a "small amount" or "small portion of [the] original [State  
14 Committee] shoot footage."<sup>46</sup> However, the "small" portion of video footage in "Ready to Flip  
15 FL-27" is virtually identical to the video footage in "Fighting Spirit," which the State Committee  
16 paid \$34,768 to shoot and produce. Moreover, those 90 seconds represent a significant portion  
17 of both ads' total runtime, with "Fighting Spirit" running at 2:21 and "Ready to Flip FL-27" at  
18 2:09. The first minute and 10 seconds of both ads are indistinguishable, while the remaining 59  
19 seconds of "Ready to Flip FL-27" contain about 20 seconds' worth of frames used in "Fighting  
20 Spirit." In total, ninety of "Ready to Flip FL-27"'s 129 seconds — over two-thirds of the ad —

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<sup>45</sup> See Compl. at 1; Press Release, *supra* note 12.

<sup>46</sup> Joint Resp. at 2; *id.*, Ex. B ¶ 3 (Patrick Kennedy Decl. (Sept. 28, 2022)). We note once again that although the media vendor describes the footage and the valuation, he does not claim to have made the valuation, instead using the passive voice to state that "the pro-rated value of this footage was valued at \$3,000."

1 were produced from footage used in “Fighting Spirit.” The reasoning that the 90 seconds of  
2 footage used is only a “small portion” of the total footage shot and is thus worth only one-tenth  
3 of the total production cost carries little weight when those 90 seconds appear to be the only  
4 footage to come out of the production that is of any value to either committee.<sup>47</sup> Respondents do  
5 not explain how the two committees could pay such disparate amounts for such similar products.  
6 Thus, it appears that the usual and normal charge or fair market value of the video footage used  
7 in “Ready to Flip FL-27” should at least be closer to the \$34,768 the State Committee paid for its  
8 initial production than the \$3,000 that the Federal Committee paid for its eventual use.<sup>48</sup>

9 If the Federal Committee purchased a mere license to use the footage while the State  
10 Committee retained ownership of the footage, it could explain why the Federal Committee’s  
11 \$3,000 disbursement to the State Committee was so much smaller than the State Committee’s  
12 \$34,768 disbursement to AL Media. But there are some factual concerns with Respondents’  
13 claim that the Federal Committee merely purchased a license to use the footage — not least of  
14 which is the conspicuous absence of the word “license” from any contemporaneous record  
15 preceding the Joint Response.<sup>49</sup> Instead, the contemporaneous records appear to memorialize a

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<sup>47</sup> The Federal Committee did not acquire or use any footage from the shoot beyond the 90 seconds at issue. *See* Joint Resp. at 2; *id.*, Ex. B ¶ 4 (Patrick Kennedy Decl. (Sept. 28, 2022) (“This expenditure paid only for the video footage seen in the campaign announcement videos *and no other archived footage from the production shoot.*” (emphasis added))).

<sup>48</sup> *Cf.* 11 C.F.R. § 100.52(d)(2) (defining “usual and normal charge for goods” as “the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution” and “usual and normal charge for any services” as “the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered”).

<sup>49</sup> *Cf.* SOR, Comm’rs. Lindenbaum, Cooksey, Dickerson & Trainor at 5-6, MUR 7938 (Greitens for US Senate) (finding no reason to believe where a license for use of a website was documented by a contemporaneous licensing agreement executed between the committee in question and the candidate, who owned the website).

1 sale of ownership of the footage rather than a sale of a license to use the footage.<sup>50</sup> Neither the  
2 Joint Response nor any of its attachments explain this discrepancy.

3           The Joint Response points to MUR 6784 (Lizbeth Benacquisto for Congress) as support  
4 for Taddeo and the Federal Committee's argument that the Commission should find no reason to  
5 believe that a violation occurred. The complaint in that matter alleged a transfer of value from a  
6 candidate's state committee to her federal committee after the candidate's federal committee  
7 used images in an advertisement that were initially produced for an advertisement for her state  
8 committee.<sup>51</sup> In that matter, the Commission found no reason to believe the respondents had  
9 violated the Act because none of the available information indicated that the federal committee  
10 had failed to purchase the images "under current market practices and at the normal and usual  
11 charges."<sup>52</sup>

12           Taddeo and the Federal Committee's reliance on this MUR is inapposite for three  
13 reasons. First, the federal committee in that matter purchased the media in question from a third-  
14 party vendor, not directly from the state committee.<sup>53</sup> Second, that third-party vendor made the  
15 valuation of the media in question, and the media was not appraised or priced by either the state

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<sup>50</sup> The Federal Committee's August 12, 2022 Pre-Primary Report discloses an August 2 disbursement to the State Committee for "Video Production Footage." Taddeo for Congress, Amended Pre-Primary Report at 101 (Aug. 12, 2022)). The State Committee's state filing describes the \$3,000 receipt as "Cost for Video Production." State Comm. Resp. at 1. The memo line of the check from the Federal Committee to the State Committee lists "Production Costs — Sale to Taddeo for Congress." Joint Resp., Ex A.

<sup>51</sup> F&LA at 2-3, MUR 6784 (Lizbeth Benacquisto for Congress).

<sup>52</sup> *Id.* at 6.

<sup>53</sup> *Id.* at 5-6 ("Respondents also provided copies of the invoices and disclosure reports reflecting the Federal Committee's payment to Meteoric Media[.]").

1 or federal committee.<sup>54</sup> Third, Benacquisto's federal committee was invoiced for the media the  
2 same day that its advertisement was broadcast, and it paid the invoice 10 days later, reporting the  
3 transaction timely on its Pre-Primary Report.<sup>55</sup> By contrast, here the Federal Committee bought  
4 the media directly from the State Committee; neither committee has provided any information  
5 concerning who made the valuation; and the transaction went unbilled and unreported for nearly  
6 two months, not appearing in either committee's reports until days after the Complaint in this  
7 matter was made public. Thus, MUR 6784 is clearly distinguishable from the instant matter.

8 This matter is similarly distinguishable from MUR 5964 (Schock for Congress), on  
9 which Respondents also rely. First, as in MUR 6784 (Lizbeth Benacquisto for Congress) — and  
10 unlike the instant matter — the valuation at issue in MUR 5964 (Schock for Congress) was made  
11 by a third-party vendor.<sup>56</sup> Second, the Commission voted not to pursue the matter because “the  
12 relatively small amount potentially in violation” did not warrant “further use of the  
13 Commission's limited resources.”<sup>57</sup> That amount was \$750. Here, the potential amount in  
14 violation is somewhere between the \$3,000 the Federal Committee paid to use the footage and  
15 the \$34,768 the State Committee paid to create the footage.<sup>58</sup> That is greater than the \$750 at

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<sup>54</sup> Cf. Joint Resp., Ex. B ¶ 3 (Patrick Kennedy Decl. (Sept. 28, 2022)) (stating that “the pro-rated value of this footage was valued at \$3,000[,]” without claiming to have made the valuation).

<sup>55</sup> *Id.* at 5-6 nn.20-21.

<sup>56</sup> See SOR at 2, Comm'rs Walther, Petersen, Bauerly, Hunter, and Weintraub, MUR 5964 (Schock for Congress, *et al.*).

<sup>57</sup> *Id.* at 3. The actual cost of the footage at issue there was never determined, but the Commissioners still characterized the “amount potentially in violation” as *de minimis*.

<sup>58</sup> See 11 C.F.R. 100.52(d)(1).



1 issue in MUR 5964 (Schock for Congress) and in other, prior *de minimis* dismissals.<sup>59</sup> For those  
2 reasons, Respondents' reliance on MUR 5964 (Schock for Congress) is unavailing.

3         The available information before the Commission — and, critically, the information not  
4 before the Commission — supports finding reason to believe here. The Federal Committee did  
5 not pay for the video footage used in “Ready to Flip FL-27” until nearly two months after it aired  
6 the completed ad; when the Federal Committee did pay for the footage, the Federal Committee  
7 paid less than a tenth of what the State Committee paid to produce the footage.<sup>60</sup> The Federal  
8 Committee seemingly valued the footage itself, without obtaining timely input from a third  
9 party.<sup>61</sup> The Federal Committee has not provided substantive support for its valuation of the  
10 footage, only an unsupported assertion from a media vendor made long after the transfer of the  
11 asset. Respondents' assertions that the substantial difference between what the two committees  
12 paid is due to the short duration of the footage and the Federal Committee's purchase of a mere  
13 license rather than full ownership are belied by the central and dominant nature of the 90-second  
14 footage at issue in “Ready to Flip FL-27” and the fact that contemporaneous documentation  
15 reflect the purchase of footage, not a license.

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<sup>59</sup> See Joint Response at 4 n.19 (listing the range of similar dismissals as spanning from \$750 to \$8,095.84). The Joint Response cites MUR 7281 (Mackenzie for Congress) and MUR 7323 (Walters for Congress) at the top of the range for *de minimis* dismissals, where the potential amounts in violation were \$4,754.69 and \$8,095.84, respectively; while the Commission did dismiss those matters pursuant to its prosecutorial discretion under *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985), the Commission did not expressly undertake a “*de minimis*” analysis in either matter, nor was the potential amount in violation solely dispositive for either determination. See F&LA at 3, MUR 7281 (Mackenzie for Congress); F&LA at 3, MUR 7323 (Walters for Congress).

<sup>60</sup> Joint Resp. at 2; State Comm. Resp. at 1.

<sup>61</sup> Compare Joint Resp. at 2 ([T]he Committee paid the state gubernatorial campaign \$3,000 for the fair market value for a license to use the original footage from the production shoot, which represented the pro-rated value of the small amount of footage used.”), with *id.*, Ex. B ¶ 5 (Patrick Kennedy Decl. (Sept. 28, 2022)) (“[T]he pro-rated value of his footage was valued at \$3,000.”) (emphasis added).

1           Based on the available information, the \$3,000 the Federal Committee paid to the State  
2 Committee for use of the video footage in “Ready to Flip FL-27” does not appear to accurately  
3 reflect the market value of the footage, which the State Committee paid \$34,768 to produce.  
4 Because the Act generally limits federal officeholders to raising and spending funds that comply  
5 with the Act’s amount limitations, source prohibitions, and reporting requirements, the Act also  
6 prevents transfers of assets from a federal candidate’s former state committee — which may  
7 have access to funds raised outside of the Act’s limits and prohibitions — to the candidate’s  
8 current federal committee.<sup>62</sup> Assets sold for their fair market value or at their usual and normal  
9 charge are excepted from this prohibition.<sup>63</sup> The available information is not sufficient to show  
10 that the Federal Committee paid the usual and normal charge in exchange for what it received.  
11 As a result, the State Committee appears to have impermissibly transferred an asset to the  
12 Federal Committee of a value equal to the difference between the \$3,000 the Federal Committee  
13 paid for use of the footage and the actual market value of that use, which is a violation of the  
14 Act’s soft-money prohibitions.

15           Furthermore, the Federal Committee did not timely disclose the \$3,000 it paid to the State  
16 Committee or its receipt of an in-kind contribution from the State Committee, in violation of the  
17 Act’s reporting rules. The Act requires a federal candidate’s authorized committee to timely  
18 report its disbursements.<sup>64</sup> The Act also requires a federal candidate’s authorized committee to  
19 report all contributions; because the Act defines contributions as “anything of value,” a federal

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<sup>62</sup> 11 C.F.R. § 110.3(d).

<sup>63</sup> Transfer of Funds E&J, 58 Fed. Reg. at 3475 (“[T]he rule should not be read to proscribe the sale of assets by the state campaign committee to the federal campaign committee, so long as those assets are sold at fair market value.”).

<sup>64</sup> See 52 U.S.C. § 30104(b), 30114; 11 C.F.R. § 104.3(b).

1 candidate's authorized committee must also report receiving "anything of value," including in-  
2 kind contributions of assets "at a charge that is less than the usual and normal charge."<sup>65</sup> The  
3 Federal Committee did not disclose its payment to the State Committee for the footage used in  
4 the June 6, 2022 advertisement in its July Quarterly Report covering receipts and disbursements  
5 received and made through June 30, 2022.<sup>66</sup> In addition, by transferring the video footage to the  
6 Federal Committee for less than its usual and normal charge, the State Committee gave  
7 something of value to the Federal Committee in the form of an in-kind contribution which the  
8 Federal Committee did not report.

9         We therefore recommend the Commission find reason to believe that (1) Taddeo and the  
10 Federal Committee violated 52 U.S.C. § 30125(e) and 11 C.F.R. § 110.3(d) by receiving an  
11 impermissible transfer of a state committee's asset; (2) the State Committee violated 11 C.F.R.  
12 § 110.3(d) by making an impermissible transfer of an asset to a federal committee; and (3) the  
13 Federal Committee violated 52 U.S.C. § 30104(b) by failing to disclose an in-kind contribution  
14 from or timely disclose the disbursement to the State Committee.

#### 15 **IV. PROPOSED INVESTIGATION**

16         Our proposed investigation will be structured to establish exactly what the Federal  
17 Committee purchased from the State Committee, when it was purchased, who determined the  
18 value of what the Federal Committee purchased, and how that determination was reached. If the  
19 Federal Committee purchased the footage outright, we would seek information that would  
20 address the significant difference in cost charged to the State Committee and paid by the Federal

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<sup>65</sup> See 52 U.S.C. §§ 30101(8), 30104(a)-(b); 11 C.F.R. §§ 100.52(d)(1), 104.3.

<sup>66</sup> See Taddeo for Congress, 2022 July Quarterly Report (July 15, 2022); Taddeo for Congress, Amended 2022 July Quarterly Report (Aug. 1, 2022).

1 Committee for a very similar product. If the Federal Committee purchased a license, we would  
2 seek information regarding the terms of the license or how those terms informed the license's  
3 valuation. Accordingly, we recommend a brief investigation, based largely on internal and third-  
4 party records, that will first ascertain what the Federal Committee received in exchange for its  
5 \$3,000 payment to the State Committee. Once we have determined the asset at issue, we will  
6 seek to further develop the record regarding the fair market value of that asset. We will attempt  
7 to conduct our investigation through voluntary means but recommend that the Commission  
8 authorize the use of compulsory process, including the issuance of appropriate interrogatories,  
9 document subpoenas, and deposition subpoenas, as necessary.

## 10 **V. RECOMMENDATIONS**

- 11 1. Find reason to believe that Taddeo for Congress and Shelby Green in her official  
12 capacity as treasurer and Annette Taddeo violated 52 U.S.C. § 30125(e)(1)(A)  
13 and 11 C.F.R. § 110.3(d) by receiving an impermissible transfer of a state  
14 committee's asset;
- 15 2. Find reason to believe that Annette Taddeo for Governor violated 11 C.F.R.  
16 § 110.3(d) by making an impermissible transfer of an asset to a federal  
17 committee;
- 18 3. Find reason to believe that Taddeo for Congress and Shelby Green in her official  
19 capacity as treasurer violated 52 U.S.C. § 30104(b) by failing to disclose an in-  
20 kind contribution or timely disclose a disbursement;
- 21 4. Approve the attached Factual and Legal Analyses;
- 22 5. Authorize compulsory process; and



1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3  
4 **RESPONDENTS:** Annette Taddeo **MUR 8044**  
5 Annette Taddeo for Congress and  
6 Shelby Green in her official capacity as treasurer  
7

8 **I. INTRODUCTION**

9 This matter was generated by a complaint filed with the Federal Election Commission  
10 (the “Commission”) by Kendra Arnold, Executive Director of Foundation for Accountability &  
11 Civic Trust, on August 2, 2022 (the “Complaint”). The Complaint alleges that Annette Taddeo’s  
12 2022 U.S. House of Representatives principal campaign committee, Taddeo for Congress and  
13 Shelby Green in her official capacity as treasurer (the “Federal Committee”), accepted a  
14 prohibited contribution from Taddeo’s 2022 gubernatorial campaign, Annette Taddeo for  
15 Governor (the “State Committee”), in violation of the Federal Election Campaign Act of 1971, as  
16 amended (the “Act”). Specifically, the Complaint alleges that the Federal Committee used video  
17 footage in an advertisement that was previously used in a State Committee advertisement. The  
18 Complaint further alleges that the Federal Committee never reported any disbursement to, nor  
19 contributions from, the State Committee on its reports filed with the Commission.

20 For the reasons below, the Commission finds reason to believe that (1) Taddeo and the  
21 Federal Committee violated 52 U.S.C. § 30125(e) and 11 C.F.R. § 110.3(d) by receiving an  
22 impermissible transfer of a state committee’s asset; and (2) the Federal Committee violated  
23 52 U.S.C. § 30104(b) by failing to disclose an in-kind contribution or timely disclose a  
24 disbursement.

1     **II.     FACTUAL BACKGROUND**

2             Annette Taddeo is a former Florida state senator and was a candidate for the Democratic  
3 nomination in the 2022 Florida gubernatorial election from October 2021 through June 2022.<sup>1</sup>  
4 The State Committee was Taddeo’s state political committee for her 2022 gubernatorial  
5 campaign.<sup>2</sup> The State Committee’s campaign finance disclosures filed with the Florida Division  
6 of Elections show that the State Committee received contributions from individuals,  
7 corporations, and labor unions that do not comply with the Act’s limitations, prohibitions, and  
8 reporting requirements.<sup>3</sup> On June 6, 2022, Taddeo withdrew from the gubernatorial election and  
9 entered the race for the U.S. House of Representatives for Florida’s 27th Congressional District.<sup>4</sup>  
10 The Federal Committee is Taddeo’s principal campaign committee for her 2022 U.S. House of  
11 Representatives campaign.<sup>5</sup>

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<sup>1</sup> Compl. at 1-2 (Aug. 2, 2022); Annette Taddeo & Taddeo for Congress Resp. at 1-2 (Sept. 28, 2022) [hereinafter Joint Resp.]; Annette Taddeo, Statement of Candidate (Oct. 18, 2021). Taddeo’s Statement of Candidate for her gubernatorial campaign is available on the Florida Division of Elections website. *See Campaign Documents Search*, FLA. DIV. OF ELECTIONS, <https://dos.elections.myflorida.com/campaign-docs/default.aspx> (search for “Taddeo” under “Account Name” “CAN — Candidate” under “Account Type” and “Statement of Candidate” under “Form Desc.”) (last visited Nov. 16, 2023).

<sup>2</sup> Compl. at 2-4. *See also Campaign Finance Database, Contributions Records*, FLA. DEP’T OF STATE, DIV. OF ELECTIONS, <https://dos.elections.myflorida.com/campaign-finance/contributions/> (last visited Nov. 16, 2023) (search for “2022 Election” under “Election Year” and “Annette Taddeo” and “Governor” under “Candidate Search”).

<sup>3</sup> *Campaign Finance Database, Contributions Records*, FLA. DEP’T OF STATE, DIV. OF ELECTIONS, <https://dos.elections.myflorida.com/campaign-finance/contributions/> (last visited Nov. 16, 2023) (search for “All” under “Election Year,” “Annette Taddeo” and “Governor” under “Candidate Search,” and remove the limit on the number of records returned).

<sup>4</sup> Annette Taddeo, Amended Statement of Candidacy (June 6, 2022), <https://docquery.fec.gov/pdf/233/202206069514725233/202206069514725233.pdf>; Compl. at 1-2; Joint Resp. at 1-2.

<sup>5</sup> Taddeo for Congress, Amended Statement of Organization (June 6, 2022), <https://docquery.fec.gov/pdf/633/202206069514724633/202206069514724633.pdf>.

1           On October 20, 2021, the State Committee released a campaign advertisement entitled  
 2 “Fighting Spirit,” announcing Taddeo’s campaign for Florida Governor.<sup>6</sup> On June 6, 2022, when  
 3 Taddeo withdrew from the Florida gubernatorial election, the Federal Committee released a  
 4 campaign advertisement, “Ready to Flip FL-27,” announcing Taddeo’s campaign for the U.S.  
 5 House of Representatives for Florida’s 27th Congressional District.<sup>7</sup>

6           The first minute and ten seconds of “Ready to Flip FL-27” is identical to the first minute  
 7 and ten seconds of “Fighting Spirit,” and the remaining one minute of “Ready to Flip FL-27”  
 8 contains other footage and content from “Fighting Spirit.”<sup>8</sup> According to the media vendor  
 9 responsible for producing both advertisements, the Federal Committee’s “Ready for FL-27”  
 10 “used approximately 90 seconds of the video footage created during the [State Committee’s]  
 11 campaign announcement production shoot, plus a few additional clips and sound bites.”<sup>9</sup>

12           According to Taddeo and the Federal Committee, the State Committee paid a media  
 13 vendor, AL Media, \$34,768 for the video shoot and production of “Fighting Spirit.”<sup>10</sup> The

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<sup>6</sup> Senator Annette Taddeo (@senatorannettetaddeo7525), *Annette Taddeo for Florida Governor — Fighting Spirit*, YOUTUBE (Oct. 20, 2021) [hereinafter Fighting Spirit Video], <https://www.youtube.com/watch?v=vkfNA7EBoic>; *see* Compl. at 2 (citing Fighting Spirit Video).

<sup>7</sup> Senator Annette Taddeo (@senatorannettetaddeo7525), *Annette Taddeo Is Ready to Flip FL-27*, YOUTUBE (June 6, 2022) [hereinafter Ready to Flip FL-27 Video], <https://www.youtube.com/watch?v=l3rRtygbZgU>; *see* Compl. at 2 (citing Ready to Flip FL-27 Video; Jim Turner, *Annette Taddeo Withdraws as a Democratic Candidate for Governor*, WUSF PUB. MEDIA (June 7, 2022, 5:33 AM), <https://wusfnews.wusf.usf.edu/politics-issues/2022-06-07/annette-taddeo-withdraws-democratic-candidate-florida-governor>).

<sup>8</sup> *Compare* Ready to Flip FL-27 Video, *with* Fighting Spirit Video. *See also* Compl. at 2-4 (including screenshots of both videos and alleging that “[t]he majority of the video footage [in Ready to Flip FL-27] was the same as that from [Fighting Spirit], and in fact the first minute and beyond are identical”); *id.*, Ex. A (attaching examples of the same video footage in each advertisement).

<sup>9</sup> Joint Resp., Ex. B ¶ 3 (Patrick Kennedy Decl. (Sept. 28, 2022)).

<sup>10</sup> Joint Resp. at 1-2; *id.*, Ex. B ¶ 5 (Patrick Kennedy Decl. (Sept. 28, 2022)). The Joint Response does not state when the State Committee’s purported payment to AL Media occurred. *Id.* The Florida Division of Elections campaign finance database reflects two disbursements from the State Committee to AL Media: \$10,000 on April 22, 2022, and \$59,290 on June 6, 2022. Both disbursements were made at least six months after “Fighting Spirit” was released, and neither correspond to the exact amount Taddeo and the Federal Committee assert that the State Committee paid for the video shoot and production, although one is larger than the purported payment and therefore may include it.



1 Federal Committee did not report an in-kind contribution from or a disbursement to either the  
 2 State Committee or AL Media on its first disclosure report filed with the Commission, nor did  
 3 the State Committee report any receipts from the Federal Committee during that timeframe.<sup>11</sup>

4 The Federal Committee did not report a disbursement to the State Committee until it filed  
 5 its 12-Day Pre-Primary Report with the Commission on August 12, 2022, on which it reported a  
 6 disbursement of \$3,000 on August 2, 2022, to the State Committee for “Video Production  
 7 Footage.”<sup>12</sup> The date of the disbursement is noteworthy, as the Federal Committee apparently  
 8 paid for the footage nearly two full months after it released the advertisement into which the  
 9 footage was incorporated. This is also the date the Complaint in this matter was received by the  
 10 Commission and four days after the Complainant published the Complaint online.<sup>13</sup>

11 The Complaint alleges that Taddeo and the Federal Committee accepted a prohibited  
 12 contribution from the State Committee in the form of the video footage used in “Fighting Spirit”

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<sup>11</sup> See Taddeo for Congress, 2022 July Quarterly Report (July 15, 2022); Taddeo for Congress, Amended 2022 July Quarterly Report (Aug. 1, 2022); Compl. at 4 & nn.10-11. See also *Campaign Finance Database, Contributions Records*, FLA. DEP’T OF STATE, DIV. OF ELECTIONS, <https://dos.elections.myflorida.com/campaign-finance/contributions/> (last visited Nov. 16, 2023) (search for “All” under “Election Year,” “Annette Taddeo” under “Candidate Search,” and limit the “Date Range” from Jan. 1, 2022 through July 31, 2022).

<sup>12</sup> Taddeo for Congress, Amended Pre-Primary Report at 101 (Aug. 12, 2022); see also Joint Resp. at 2 (“On August 2, 2022, the [Federal] Committee paid the [State Committee] \$3,000 for the fair market value for a license to use the original footage from the production shoot, which represented the pro-rated value of the small amount of footage used.”); *id.*, Ex. A (attaching check copy with memo entry “Production Costs — Sale to Taddeo for Congress); *id.*, Ex. B ¶ 4 (Patrick Kennedy Decl. (Sept. 28, 2022)) (“On August 2, 2022, [the Federal Committee] paid [the State Committee] \$3,000 for the license to use the original video footage from the production shoot in the new congressional announcement video.”); see also *Campaign Finance Database, Expenditures Records*, FLA. DEP’T OF STATE, DIV. OF ELECTIONS, <https://dos.elections.myflorida.com/campaign-finance/expenditures/> (last visited Nov. 16, 2023) (search for “All” under “Election Year” and “Annette Taddeo” under “Candidate Search”) (reflecting \$3,000 expenditure by State Committee to Federal Committee on August 4, 2022).

<sup>13</sup> See Compl. at 1. The Complainant appears to have released a press release about the Complaint dated July 29, 2022. See Press Release, Found. for Accountability & Civic Tr., FACT Files FEC Complaint Against FL Congressional Candidate Annette Taddeo (July 29, 2022), <https://www.factdc.org/post/fact-files-fec-complaint-against-fl-congressional-candidate-annette-taddeo>. There appears to have been at least one press report about the filing of the Complaint before it was officially stamped by CELA as received. See Gabe Kaminsky, *EXCLUSIVE: Florida Dem Candidate May Have Illegally Transferred Campaign Assets, Complaint Alleges*, DAILY CALLER (July 29, 2022, 2:41 PM), <https://dailycaller.com/2022/07/29/florida-dem-annette-taddeo-campaign-assets-federal-election-commission/>.

1 that the State Committee transferred to the Federal Committee for its use in “Ready to Flip FL-  
2 27.”<sup>14</sup> The Complaint further alleges that the Federal Committee violated the Act’s reporting  
3 requirements by failing to report disbursements to the State Committee relating to the cost of the  
4 video footage.<sup>15</sup>

5 Taddeo and the Federal Committee acknowledge that video footage from the State  
6 Committee’s “Fighting Spirit” advertisement was used in the Federal Committee’s “Ready to  
7 Flip FL-27” campaign announcement.<sup>16</sup> However, Taddeo and the Federal Committee contend  
8 that the Federal Committee “paid fair market value for that footage” because it paid \$3,000 to the  
9 State Committee on August 2, 2022, “for a license to use the original footage from the  
10 production shoot, which represented the pro-rated value of the small amount of footage used.”<sup>17</sup>  
11 Taddeo and the Federal Committee submit a sworn declaration from the Chief Financial Officer  
12 at AL Media, the media vendor responsible for producing both the State Committee’s “Fighting  
13 Spirit” and the Federal Committee’s “Ready to Flip FL-27,” who attests that the \$3,000 the  
14 Federal Committee paid for a “small portion of [the] original [State Committee] shoot  
15 footage . . . should be considered fair market value for the pro-rated value of the original  
16 footage.”<sup>18</sup>

17 Taddeo and the Federal Committee argue that the transfer of the video footage was  
18 therefore permissible because the Federal Committee paid the fair market value or usual and

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<sup>14</sup> Compl. at 5-6.

<sup>15</sup> *See id.* at 6.

<sup>16</sup> Joint Resp. at 1.

<sup>17</sup> *Id.* at 1-2.

<sup>18</sup> *Id.*, Ex. B (Patrick Kennedy Decl. (Sept. 28, 2022)).

1 normal charge for the use of that asset.<sup>19</sup> Alternatively, Taddeo and the Federal Committee  
2 argue that the Commission should exercise its prosecutorial discretion and dismiss the Complaint  
3 given the *de minimis* amount at issue.<sup>20</sup>

### 4 **III. ANALYSIS**

#### 5 **A. Applicable Law**

6 The Act and Commission regulations define “contribution” as “any gift, subscription,  
7 loan, advance, or deposit of money or anything of value made by any person for the purpose of  
8 influencing any election for Federal office.”<sup>21</sup> “[A]nything of value” includes in-kind  
9 contributions, such as “the provision of any goods or services without charge or at a charge that  
10 is less than the usual and normal charge.”<sup>22</sup> Commission regulations define “usual and normal  
11 charge” as “the price of those goods in the market from which they ordinarily would have been  
12 purchased at the time of the contribution,” or the charge for services “at a commercially  
13 reasonable rate prevailing at the time the services were rendered.”<sup>23</sup> If a committee pays fair  
14 market value for a good or service, then the transaction is not considered a contribution.<sup>24</sup> “If  
15 goods or services are provided at less than the usual and normal charge, the amount of the in-  
16 kind contribution is the difference between the usual and normal charge for the goods or services  
17 at the time of the contribution and the amount charged the political committee.”<sup>25</sup>

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<sup>19</sup> *Id.* at 2-3.

<sup>20</sup> *Id.* at 4.

<sup>21</sup> 52 U.S.C. § 30101(8)(A)(i); accord 11 C.F.R. § 100.52(a); see also 52 U.S.C. § 30118(b)(2) (adding that “contribution” includes “any direct or indirect payment, . . . gift of money, or any services, or anything of value”).

<sup>22</sup> 11 C.F.R. § 100.52(d)(1).

<sup>23</sup> *Id.* § 100.52(d)(2).

<sup>24</sup> See *id.* § 100.52(d)(1).

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

1           The Act and Commission regulations prohibit federal candidates, federal officeholders,  
2           their agents, and entities directly or indirectly established, financed, maintained, or controlled by  
3           federal candidates or officeholders from soliciting, receiving, directing, transferring, or spending  
4           funds in connection with an election unless the funds are subject to the limitations, prohibitions,  
5           and reporting requirements of the Act.<sup>26</sup> Under Florida law, candidates in state elections may  
6           accept contributions from corporations and unions.<sup>27</sup> Florida law permits contributions to  
7           candidates for statewide offices in amounts up to \$3,000 for any election.<sup>28</sup>

8           The Commission’s regulations explicitly prohibit “[t]ransfers of funds or assets from a  
9           candidate’s campaign committee or account for a nonfederal election to his or her principal  
10          campaign committee or other authorized committee for a federal election.”<sup>29</sup> The Commission  
11          has explained that this prohibition on all transfers from a candidate’s state or local committee to  
12          the candidate’s federal committee is intended to prevent a federal committee’s indirect use of  
13          “soft money” raised in compliance with state, but not federal, law.<sup>30</sup> The transfer of a nonfederal

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<sup>26</sup> 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. § 300.61.

<sup>27</sup> See FLA. STAT. §§ 106.08, 106.11 (2022); see also *id.* § 106.011(14) (including “corporation[s]” in the definition of “[p]erson” under state campaign finance statutes).

<sup>28</sup> *Id.* § 106.08(1)(a)(1).

<sup>29</sup> 11 C.F.R. § 110.3(d). See also Factual & Legal Analysis (“F&LA”) at 4, MUR 5426 (Dale Schultz for Congress, *et al.*) (“Commission regulations specifically prohibit transfers of funds or assets from a candidate’s account for a non-federal election to his or her principal campaign committee for a federal election.”); F&LA at 7-8, MUR 5722 (Friends for Lauzen, *et al.*) (finding state committee made an in-kind contribution to a federal candidate for testing-the-waters expenses despite fact that state committee had sufficient permissible funds to cover the expenses based on prohibition in 11 C.F.R. § 110.3(d)); F&LA at 3, MUR 6219 (Kuhl for Congress) (stating that, in addition to state law allowing contributions in amounts and from sources not subject to the Act’s limitations, “none of the state campaign funds at issue were subject to the Act’s reporting provisions”); F&LA at 4, MUR 6253 (Trey Gowdy for Congress, *et al.*) (same). In MUR 7337 (Debbie Lesko, *et al.*), the Commission found reason to believe a federal candidate and her state committee violated 52 U.S.C. § 30125(e)(1)(A) by financing an independent expenditure-only political committee even though the relevant funds did not violate the Act’s source prohibitions and contribution limits because, *inter alia*, “the nature of the funds and the funds being subject to the Act’s reporting requirements are separate requirements.” F&LA at 5-9, MUR 7337 (Debbie Lesko, *et al.*).

<sup>30</sup> See Transfers of Funds from State to Federal Campaigns, 58 Fed. Reg. 3474, 3474-75 (Jan. 8, 1993) [hereinafter Transfer of Funds E&J] (explaining that the Commission was adopting a total prohibition in this circumstance because of the practical difficulty in linking or otherwise accounting for federally permissible funds

1 committee’s assets to the campaign committee of a candidate for federal office is permissible,  
 2 however, where the federal committee pays the fair market value or the “usual and normal  
 3 charge” for the use of such assets.<sup>31</sup> The Commission has found reason to believe and has  
 4 subsequently conciliated matters where the candidate’s federal committee does not pay the state  
 5 committee for goods and services used by the federal committee.<sup>32</sup> Accordingly, a federal

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available for transfer); *see also* F&LA at 3-4, MUR 7106 (Chappelle-Nadal for Congress) (describing 11 C.F.R. § 110.3(d) as “an extension of the Act’s soft money ban”); First Gen. Counsel’s Rpt. (“First GCR”) at 10-11 & Certification (“Cert.”) ¶¶ 1-2 (Feb. 11, 2005), MUR 5406 (Hynes for Senate) (approving a reason to believe recommendation that a dual candidate’s federal and state committees violated 11 C.F.R. § 110.3(d) by making a direct contribution from a state to federal committee and requiring disgorgement of contribution amount to U.S. Treasury).

<sup>31</sup> Transfer of Funds E&J, 58 Fed. Reg. at 3475 (“[T]he rule should not be read to proscribe the sale of assets by the state campaign committee to the federal campaign committee, so long as those assets are sold at fair market value.”); *see also, e.g.*, Advisory Opinion 1992-19 at 2 (Mike Kreidler for Congress) (approving request to permit the lease of state campaign committee’s computer equipment to candidate’s federal campaign committee); Advisory Opinion 2014-06 at 8 (Ryan, *et al.*) (finding that a candidate could rent his committee’s mailing list at fair market value to promote a book); Statement of Reasons (“SOR”), Comm’rs. Petersen, Bauerly, Hunter, McGahn & Weintraub at 5-6, MUR 6216 (Coakley for Senate, *et al.*) (explaining a finding of no reason to believe an impermissible transfer occurred where a candidate’s federal committee paid her state committee for assets including fundraising database, website redesign, domain names, and promotional materials because there was “no information to suggest that the amount paid . . . for the assets was not fair market value”); F&LA at 4-6, MURs 6474, 6534 (Citizens for Josh Mandel, *et al.*) (finding no reason to believe an impermissible transfer occurred where a candidate’s federal committee used a website domain name of his state committee because federal committee hired a third party to coordinate an arm’s length deal for state committee’s website and domain name and there was no information to suggest the transfer was provided for less than its fair market value).

<sup>32</sup> *See, e.g.*, Conciliation Agreement (“CA”) ¶¶ IV.8-9, V.1, MUR 5426 (Dale Schultz for Congress, *et al.*) (concerning campaign worker expenses); CA ¶¶ IV.10-11, V.1-2, MUR 5646 (Cohen for N.H.) (concerning start-up expenses); CA ¶¶ IV.4-5, V.1, MUR 6257 (John Callahan, *et al.*) (concerning feasibility research); CA ¶¶ IV.6-7, 12-13, V.2-4, MUR 6267 (Jonathan Paton for Congress, *et al.*) (concerning polling and survey costs); CA ¶¶ IV.7, V.1-3, MUR 7076 (Richard Tisei, *et al.*) (concerning polling and fundraising analysis); *see also* F&LA at 4, 6, MUR 5636 (Russ Diamond) (finding reason to believe that a candidate and his state committee violated 11 C.F.R. § 110.3(d) where, *inter alia*, the state committee paid for website-related expenses that featured both federal and state campaigns and the pro-rated reimbursement to the state committee appeared inadequate and no basis for the calculation of the pro-rated portion was provided).

1 committee must pay the usual and normal charge for use of the asset to the proper owner,  
 2 whether that is the state committee, the candidate, or a third-party vendor.<sup>33</sup>

3 The Act also requires committee treasurers to file reports of receipts and disbursements.<sup>34</sup>  
 4 These reports must include, *inter alia*, the identification of each person who makes a contribution  
 5 or contributions that have an aggregate amount or value in excess of \$200 during an election  
 6 cycle together with the date and amount of any such contribution.<sup>35</sup>

7 **B. The Commission Finds Reason to Believe That Taddeo and the Federal**  
 8 **Committee Violated the Act’s Asset Transfer and Disclosure Requirements**  
 9 **by Receiving an Asset from the State Committee for Less Than the Usual and**  
 10 **Normal Charge and Failing to Timely Report the Transaction**

11 The Complaint alleges that Taddeo and the Federal Committee accepted a prohibited and  
 12 unreported contribution from the State Committee when the Federal Committee used video  
 13 footage in “Ready to Flip FL-27” that was previously used in the State Committee’s “Fighting  
 14 Spirit” without paying the State Committee for the cost of the video footage.<sup>36</sup> Taddeo and the

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<sup>33</sup> See 11 C.F.R. § 100.52(d). Compare F&LA at 4-6, MUR 6784 (Lizbeth Benacquisto for Congress, *et al.*) (finding no reason to believe a federal committee’s use of images used in state campaign advertisement resulted in a violation where the federal committee provided copies of invoices documenting payments to the vendor, which retained ownership of the images, and there was no information indicating that the payments were below the usual and normal charges), and F&LA at 10-11, MUR 6218 (Ball4NY, *et al.*) (finding no reason to believe a federal committee had not paid the usual and normal charge for use of photographs of state officeholder and federal candidate where the committee’s treasurer averred that the federal committee purchased the rights to the photographs from the state legislature and provided supporting documentation and there was no information to the contrary), and SOR at 2, Comm’rs Walther, Petersen, Bauerly, Hunter, & Weintraub, MUR 5964 (Schock for Congress, *et al.*) (dismissing, in an exercise of prosecutorial discretion, allegations regarding a federal committee’s use of footage of state officeholder and federal candidate where the federal committee claimed it paid the vendor for use rights and for the production of DVDs containing the footage), with F&LA at 2-4, 6-9, MUR 6792 (Sean Eldridge for Congress, *et al.*) (finding reason to believe that video footage a committee received from a corporation without payment resulted in a violation). See also SOR, Comm’rs. Lindenbaum, Cooksey, Dickerson & Trainor at 5-6, MUR 7938 (Greitens for US Senate) (finding no reason to believe where a license for use of a website was documented by a contemporaneous licensing agreement executed between the committee in question and the candidate, who owned the website).

<sup>34</sup> 52 U.S.C. § 30104(a); 11 C.F.R. § 104.3.

<sup>35</sup> 52 U.S.C. § 30104(b)(3)(A); 11 C.F.R. § 104.3(a)(4).

<sup>36</sup> Compl. at 4-6.

1 Federal Committee do not dispute that the video footage in “Ready to Flip FL-27” was originally  
2 produced for the State Committee’s “Fighting Spirit”; rather, they contend the \$3,000 the Federal  
3 Committee paid to the State Committee on August 2, 2022, represented the fair market value for  
4 its use of the video footage.<sup>37</sup> Taddeo and the Federal Committee attach to their Response a  
5 declaration from AL Media’s Chief Financial Officer asserting that the “pro-rated value of th[e]  
6 footage [used in ‘Ready to Flip FL-27’] was valued at \$3,000,” but the declaration does not  
7 articulate or otherwise explain the basis for that valuation.<sup>38</sup> Importantly, the declaration is of  
8 limited value here because the declarant specifically states that the “pro-rated value of this  
9 footage was valued at \$3,000,” and avoids articulating what role, if any, he had in the footage’s  
10 valuation.<sup>39</sup>

11 While the Commission has found no reason to believe in asset-transfer matters where the  
12 respondents used third-party brokers or vendors to effectuate the transfer at fair market value or  
13 where there was no information to suggest the transfer was provided for less than fair market  
14 value, the Commission has generally looked for some degree of support for the proposition that  
15 an asset transfer was for fair market value.<sup>40</sup> Specifically, the Commission has previously found

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<sup>37</sup> Joint Resp. at 1-2 (acknowledging use of “footage obtained from a production shoot paid for by the [State Committee]” and asserting the \$3,000 reflected “fair market value for a license to use the original footage from the production shoot, which represented the pro-rated value of the small amount of footage used”); *id.*, Ex. B (Patrick Kennedy Decl. (Sept. 28, 2022)) (acknowledging the Federal Committee used 90 seconds of video footage and additional clips and sound bites from the State Committee’s production shoot).

<sup>38</sup> See Joint Resp., Ex. B ¶ 5 (Patrick Kennedy Decl. (Sept. 28, 2022)).

<sup>39</sup> Joint Resp. at 2; *id.*, Ex. B ¶ 3 (Patrick Kennedy Decl. (Sept. 28, 2022)).

<sup>40</sup> See, e.g., F&LA at 4-6, MURs 6474, 6534 (Citizens for Josh Mandel, *et al.*) (finding no reason to believe where a candidate’s federal committee used the website domain of his state committee because federal committee hired a third party to coordinate an arm’s length deal for state committee’s website and domain name and there was no information to suggest the transfer was provided for less than its fair market value); SOR, Comm’rs. Petersen, Bauerly, Hunter, McGahn & Weintraub at 5-6, MUR 6216 (Coakley for Senate, *et al.*) (finding no reason to believe where a candidate’s federal committee paid her state committee for assets including a fundraising database, website redesign, domain names, and promotional materials because there was “no information to suggest that the amount paid . . . for the assets was not fair market value”).

1 reason to believe in state-committee-asset-transfer matters where it was unclear whether the  
2 purported *pro rata* calculation for payments to the state committee for the federal committee’s  
3 use of the asset accurately represented the fair market value or usual and normal charge for the  
4 asset.<sup>41</sup>

5 In this matter, neither the Joint Response nor its attached declaration from the media  
6 vendor attempt to explain the basis for the purported \$3,000 “pro-rated value” of the video  
7 footage used by the Federal Committee in “Ready to Flip FL-27.” At no point do Taddeo or the  
8 Federal Committee definitively state who made the valuation at issue or when it was made.<sup>42</sup>  
9 Although the decision of whether to purchase a limited license or full ownership of footage  
10 would seem to be essential to determining the valuation of the asset transferred, even that aspect  
11 of the transaction remains unclear, with no one explaining why the Federal Committee’s filings  
12 and contemporaneous documentation seem to show an intent to purchase the actual footage,  
13 while Taddeo and the Federal Committee’s explanations and supporting declaration in response  
14 to the Complaint assert that the Federal Committee purchased only a license to use the footage.<sup>43</sup>

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<sup>41</sup> See, e.g., F&LA at 5, MUR 6257 (John Callahan, *et al.*) (“[I]t is unclear on what basis the Federal Committee calculated its pro-rated share of the research that it purchased. If the Federal Committee used the entire file that [the vendor] compiled for the [local committee] . . . , then the [pro-rated amount] that the Federal Committee paid for the research . . . may not have been the usual and normal charge for that research.”); F&LA at 4, MUR 5636 (Russ Diamond) (finding an in-kind contribution by a state committee to a federal committee in the form of campaign website expenditures where the candidate “d[id] not describe the basis for [the claimed *pro rata*] calculation and the amount seems inadequate given that both campaigns appear to have been featured in equal proportions”); see also F&LA at 7-8, MURs 7628, 7636, 7992 (Kris Kobach, *et al.*) (finding reason to believe an in-kind corporate contribution was made in connection with a mailing list provided at less than the usual and normal charge where, although an affidavit was provided attesting to payment at the market rate, “the available information indicates that the . . . rental price was significantly below market rate, Respondent has been unable to articulate how the rate [paid] was determined, and [the parties] were on both sides of the rental transaction”).

<sup>42</sup> See Joint Resp., Ex. B ¶ 5 (Patrick Kennedy Decl. (Sept. 28, 2022)) (“[T]he pro-rated value of this footage was valued at \$3,000.”).

<sup>43</sup> Compare Taddeo for Congress, Amended Pre-Primary Report at 101 (Aug. 12, 2022), and Joint Resp., Ex A, with Joint Resp. at 2, and Joint Resp., Ex. B ¶ 4 (Patrick Kennedy Decl. (Sept. 28, 2022)).



1 Given the incomplete and conflicting information, significant questions remain as to whether the  
2 Federal Committee purchased the footage for its usual and normal charge.

3 The timing of the payment is also relevant: the Federal Committee’s \$3,000 payment to  
4 the State Committee was not made until August 2, 2022, approximately two months after Taddeo  
5 debuted “Ready to Flip FL-27” on June 6, 2022; four days after the Complainant made the  
6 Complaint public on July 29, 2022, the date on the Complaint itself; and the same day the  
7 Complaint was marked received by the Commission.<sup>44</sup> This timing raises two concerns. First, it  
8 casts doubt on any objective valuation of the footage because the footage itself was in use long  
9 before the Federal Committee paid for it. Second, it suggests the Federal Committee made the  
10 payment in response to the Complaint rather than as part of a *bona fide* negotiated transaction for  
11 the usual and normal charge.

12 Taddeo and the Federal Committee’s chief apparent justification for the \$3,000 valuation  
13 is that the 90 seconds of produced video footage was a “small amount” or “small portion of [the]  
14 original [State Committee] shoot footage.”<sup>45</sup> However, the “small” portion of video footage in  
15 “Ready to Flip FL-27” is virtually identical to the video footage in “Fighting Spirit,” which the  
16 State Committee paid \$34,768 to shoot and produce. Moreover, those 90 seconds represent a  
17 significant portion of both ads’ total runtime, with “Fighting Spirit” running at 2:21 and “Ready  
18 to Flip FL-27” at 2:09. The first minute and 10 seconds of both ads are indistinguishable, while  
19 the remaining 59 seconds of “Ready to Flip FL-27” contain about 20 seconds’ worth of frames  
20 used in “Fighting Spirit.” In total, ninety of “Ready to Flip FL-27”’s 129 seconds — over two-

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<sup>44</sup> See Compl. at 1; Press Release, *supra* note 13.

<sup>45</sup> Joint Resp. at 2; *id.*, Ex. B ¶ 3 (Patrick Kennedy Decl. (Sept. 28, 2022)). We note once again that although the media vendor describes the footage and the valuation, he does not claim to have made the valuation, instead using the passive voice to state that “the pro-rated value of this footage was valued at \$3,000.”

1 thirds of the ad — were produced from footage used in “Fighting Spirit.” The reasoning that the  
2 90 seconds of footage used is only a “small portion” of the total footage shot and is thus worth  
3 only one-tenth of the total production cost carries little weight when those 90 seconds appear to  
4 be the only footage to come out of the production that is of any value to either committee.<sup>46</sup>  
5 Taddeo and the Federal Committee do not explain how the two committees could pay such  
6 disparate amounts for such similar products. Thus, it appears that the usual and normal charge or  
7 fair market value of the video footage used in “Ready to Flip FL-27” should at least be closer to  
8 the \$34,768 the State Committee paid for its initial production than the \$3,000 that the Federal  
9 Committee paid for its eventual use.<sup>47</sup>

10 If the Federal Committee purchased a mere license to use the footage while the State  
11 Committee retained ownership of the footage, it could explain why the Federal Committee’s  
12 \$3,000 disbursement to the State Committee was so much smaller than the State Committee’s  
13 \$34,768 disbursement to AL Media. But there are some factual concerns with Respondents’  
14 claim that the Federal Committee merely purchased a license to use the footage — not least of  
15 which is the conspicuous absence of the word “license” from any contemporaneous record  
16 preceding the Joint Response.<sup>48</sup> Instead, the contemporaneous records appear to memorialize a

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<sup>46</sup> The Federal Committee did not acquire or use any footage from the shoot beyond the 90 seconds at issue. *See* Joint Resp. at 2; *id.*, Ex. B ¶ 4 (Patrick Kennedy Decl. (Sept. 28, 2022) (“This expenditure paid only for the video footage seen in the campaign announcement videos *and no other archived footage from the production shoot.*” (emphasis added))).

<sup>47</sup> *Cf.* 11 C.F.R. § 100.52(d)(2) (defining “usual and normal charge for goods” as “the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution” and “usual and normal charge for any services” as “the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered”).

<sup>48</sup> *Cf.* SOR, Comm’rs. Lindenbaum, Cooksey, Dickerson & Trainor at 5-6, MUR 7938 (Greitens for US Senate) (finding no reason to believe where a license for use of a website was documented by a contemporaneous licensing agreement executed between the committee in question and the candidate, who owned the website).

1 sale of ownership of the footage rather than a sale of a license to use the footage.<sup>49</sup> Neither the  
2 Joint Response nor any of its attachments explain this discrepancy.

3         The Joint Response points to MUR 6784 (Lizbeth Benacquisto for Congress) as support  
4 for Taddeo and the Federal Committee’s argument that the Commission should find no reason to  
5 believe that a violation occurred. The complaint in that matter alleged a transfer of value from a  
6 candidate’s state committee to her federal committee after the candidate’s federal committee  
7 used images in an advertisement that were initially produced for an advertisement for her state  
8 committee.<sup>50</sup> In that matter, the Commission found no reason to believe the respondents had  
9 violated the Act because none of the available information indicated that the federal committee  
10 had failed to purchase the images “under current market practices and at the normal and usual  
11 charges.”<sup>51</sup>

12         Taddeo and the Federal Committee’s reliance on this MUR is inapposite for three  
13 reasons. First, the federal committee in that matter purchased the media in question from a third-  
14 party vendor, not directly from the state committee.<sup>52</sup> Second, that third-party vendor made the  
15 valuation of the media in question, and the media was not appraised or priced by either the state  
16 or federal committee.<sup>53</sup> Third, Benacquisto’s federal committee was invoiced for the media the

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<sup>49</sup> The Federal Committee’s August 12, 2022 Pre-Primary Report discloses an August 2 disbursement to the State Committee for “Video Production Footage.” Taddeo for Congress, Amended Pre-Primary Report at 101 (Aug. 12, 2022)). The memo line of the check from the Federal Committee to the State Committee lists “Production Costs — Sale to Taddeo for Congress.” Joint Resp., Ex A. The State Committee’s state filing describes the \$3,000 receipt on August 2 as “Cost for Video Production.” *Campaign Finance Database, Expenditures Records*, FLA. DEP’T OF STATE, DIV. OF ELECTIONS, <https://dos.elections.myflorida.com/campaign-finance/expenditures/> (last visited Nov. 16, 2023) (search for “All” under “Election Year” and “Annette Taddeo” under “Candidate Search”).

<sup>50</sup> F&LA at 2-3, MUR 6784 (Lizbeth Benacquisto for Congress).

<sup>51</sup> *Id.* at 6.

<sup>52</sup> *Id.* at 5-6 (“Respondents also provided copies of the invoices and disclosure reports reflecting the Federal Committee’s payment to Meteoric Media[.]”).

<sup>53</sup> *Cf.* Joint Resp., Ex. B ¶ 3 (Patrick Kennedy Decl. (Sept. 28, 2022)) (stating that “the pro-rated value of this footage was valued at \$3,000[.]” without claiming to have made the valuation).

1 same day that its advertisement was broadcast, and it paid the invoice 10 days later, reporting the  
2 transaction timely on its Pre-Primary Report.<sup>54</sup> By contrast, here the Federal Committee bought  
3 the media directly from the State Committee; neither the Federal Committee nor Taddeo have  
4 provided any information concerning who made the valuation; and the transaction went unbilled  
5 and unreported for nearly two months, not appearing in either committee’s reports until days  
6 after the Complaint in this matter was made public. Thus, MUR 6784 is clearly distinguishable  
7 from the instant matter.

8 This matter is similarly distinguishable from MUR 5964 (Schock for Congress), on  
9 which Respondents also rely. First, as in MUR 6784 (Lizbeth Benacquisto for Congress) — and  
10 unlike the instant matter — the valuation at issue in MUR 5964 (Schock for Congress) was made  
11 by a third-party vendor.<sup>55</sup> Second, the Commission voted not to pursue the matter because “the  
12 relatively small amount potentially in violation” did not warrant “further use of the  
13 Commission’s limited resources.”<sup>56</sup> That amount was \$750. Here, the potential amount in  
14 violation is somewhere between the \$3,000 the Federal Committee paid to use the footage and  
15 the \$34,768 the State Committee paid to create the footage.<sup>57</sup> That is greater than the \$750 at  
16 issue in MUR 5964 (Schock for Congress) and in other, prior *de minimis* dismissals.<sup>58</sup> For those

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<sup>54</sup> *Id.* at 5-6 nn.20-21.

<sup>55</sup> *See* SOR at 2, Comm’rs Walther, Petersen, Bauerly, Hunter, and Weintraub, MUR 5964 (Schock for Congress, *et al.*).

<sup>56</sup> *Id.* at 3. The actual cost of the footage at issue there was never determined, but the Commissioners still characterized the “amount potentially in violation” as *de minimis*.

<sup>57</sup> *See* 11 C.F.R. 100.52(d)(1).

<sup>58</sup> *See* Joint Response at 4 n.19 (listing the range of similar dismissals as spanning from \$750 to \$8,095.84). The Joint Response cites MUR 7281 (Mackenzie for Congress) and MUR 7323 (Walters for Congress) at the top of the range for *de minimis* dismissals, where the potential amounts in violation were \$4,754.69 and \$8,095.84, respectively; while the Commission did dismiss those matters pursuant to its prosecutorial discretion under *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985), the Commission did not expressly undertake a “*de minimis*” analysis in either matter, nor was the potential amount in violation solely dispositive for either determination. *See* F&LA at 3, MUR 7281 (Mackenzie for Congress); F&LA at 3, MUR 7323 (Walters for Congress).

1 reasons, Taddeo and the Federal Committee’s reliance on MUR 5964 (Schock for Congress) is  
2 unavailing.

3         The available information before the Commission — and, critically, the information not  
4 before the Commission — supports finding reason to believe here. The Federal Committee did  
5 not pay for the video footage used in “Ready to Flip FL-27” until nearly two months after it aired  
6 the completed ad; when the Federal Committee did pay for the footage, the Federal Committee  
7 paid less than a tenth of what the State Committee paid to produce the footage.<sup>59</sup> The Federal  
8 Committee seemingly valued the footage itself, without obtaining timely input from a third  
9 party.<sup>60</sup> The Federal Committee has not provided substantive support for its valuation of the  
10 footage, only an unsupported assertion from a media vendor made long after the transfer of the  
11 asset. Taddeo and the Federal Committee’s assertions that the substantial difference between  
12 what the two committees paid is due to the short duration of the footage and the Federal  
13 Committee’s purchase of a mere license rather than full ownership are belied by the central and  
14 dominant nature of the 90-second footage at issue in “Ready to Flip FL-27” and the fact that  
15 contemporaneous documentation reflect the purchase of footage, not a license.

16         Based on the available information, the \$3,000 the Federal Committee paid to the State  
17 Committee for use of the video footage in “Ready to Flip FL-27” does not appear to accurately  
18 reflect the market value of the footage, which the State Committee paid \$34,768 to produce.  
19 Because the Act generally limits federal officeholders to raising and spending funds that comply  
20 with the Act’s amount limitations, source prohibitions, and reporting requirements, the Act also

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<sup>59</sup> Joint Resp. at 2.

<sup>60</sup> *Compare* Joint Resp. at 2 ([T]he Committee paid the state gubernatorial campaign \$3,000 for the fair market value for a license to use the original footage from the production shoot, which represented the pro-rated value of the small amount of footage used.”), *with id.*, Ex. B ¶ 5 (Patrick Kennedy Decl. (Sept. 28, 2022)) (“[T]he pro-rated value of his footage *was valued* at \$3,000.”) (emphasis added).

1 prevents transfers of assets from a federal candidate’s former state committee — which may  
2 have access to funds raised outside of the Act’s limits and prohibitions — to the candidate’s  
3 current federal committee.<sup>61</sup> Assets sold for their fair market value or at their usual and normal  
4 charge are excepted from this prohibition.<sup>62</sup> The available information is not sufficient to show  
5 that the Federal Committee paid the usual and normal charge in exchange for what it received.  
6 As a result, the Federal Committee appears to have impermissibly received an asset from the  
7 State Committee of a value equal to the difference between the \$3,000 the Federal Committee  
8 paid for use of the footage and the actual market value of that use, which is a violation of the  
9 Act’s soft-money prohibitions.

10 Furthermore, the Federal Committee did not timely disclose the \$3,000 it paid to the State  
11 Committee or its receipt of an in-kind contribution from the State Committee, in violation of the  
12 Act’s reporting rules. The Act requires a federal candidate’s authorized committee to timely  
13 report its disbursements.<sup>63</sup> The Act also requires a federal candidate’s authorized committee to  
14 report all contributions; because the Act defines contributions as “anything of value,” a federal  
15 candidate’s authorized committee must also report receiving “anything of value,” including in-  
16 kind contributions of assets “at a charge that is less than the usual and normal charge.”<sup>64</sup> The  
17 Federal Committee did not disclose its payment to the State Committee for the footage used in  
18 the June 6, 2022 advertisement in its July Quarterly Report covering receipts and disbursements

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<sup>61</sup> 11 C.F.R. § 110.3(d).

<sup>62</sup> Transfer of Funds E&J, 58 Fed. Reg. at 3475 (“[T]he rule should not be read to proscribe the sale of assets by the state campaign committee to the federal campaign committee, so long as those assets are sold at fair market value.”).

<sup>63</sup> See 52 U.S.C. § 30104(b), 30114; 11 C.F.R. § 104.3(b).

<sup>64</sup> See 52 U.S.C. §§ 30101(8), 30104(a)-(b); 11 C.F.R. §§ 100.52(d)(1), 104.3.

1 received and made through June 30, 2022.<sup>65</sup> In addition, by transferring the video footage to the  
2 Federal Committee for less than its usual and normal charge, the State Committee gave  
3 something of value to the Federal Committee in the form of an in-kind contribution which the  
4 Federal Committee did not report.

5 The Commission therefore finds reason to believe that (1) Taddeo and the Federal  
6 Committee violated 52 U.S.C. § 30125(e) and 11 C.F.R. § 110.3(d) by receiving an  
7 impermissible transfer of a state committee's asset; and (2) the Federal Committee violated  
8 52 U.S.C. § 30104(b) by failing to disclose an in-kind contribution from and failing to timely  
9 disclose the disbursement to the State Committee.

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<sup>65</sup> See Taddeo for Congress, 2022 July Quarterly Report (July 15, 2022); Taddeo for Congress, Amended 2022 July Quarterly Report (Aug. 1, 2022).

**FEDERAL ELECTION COMMISSION****FACTUAL AND LEGAL ANALYSIS****RESPONDENTS:** Annette Taddeo for Governor**MUR 8044****I. INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission (the “Commission”) by Kendra Arnold, Executive Director of Foundation for Accountability & Civic Trust, on August 2, 2022 (the “Complaint”). The Complaint alleges that Annette Taddeo’s 2022 gubernatorial campaign, Annette Taddeo for Governor (the “State Committee”), made a prohibited contribution to Taddeo’s 2022 U.S. House of Representatives principal campaign committee, Taddeo for Congress and Shelby Green in her official capacity as treasurer (the “Federal Committee”), in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”). Specifically, the Complaint alleges that the Federal Committee used video footage in an advertisement that was previously used in a State Committee advertisement.

For the reasons below, the Commission finds reason to believe that the State Committee violated 11 C.F.R. § 110.3(d) by making an impermissible transfer of an asset to a federal committee.

**II. FACTUAL BACKGROUND**

Annette Taddeo is a former Florida state senator and was a candidate for the Democratic nomination in the 2022 Florida gubernatorial election from October 2021 through June 2022.<sup>1</sup> The State Committee was Taddeo’s state political committee for her 2022 gubernatorial

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<sup>1</sup> Compl. at 1-2 (Aug. 2, 2022); Annette Taddeo, Statement of Candidate (Oct. 18, 2021). Taddeo’s Statement of Candidate for her gubernatorial campaign is available on the Florida Division of Elections website. *See Campaign Documents Search*, FLA. DIV. OF ELECTIONS, <https://dos.elections.myflorida.com/campaign-docs/default.aspx> (search for “Taddeo” under “Account Name” “CAN — Candidate” under “Account Type” and “Statement of Candidate” under “Form Desc.”) (last visited Nov. 16, 2023).



1 campaign.<sup>2</sup> On June 6, 2022, Taddeo withdrew from the gubernatorial election and entered the  
 2 race for the U.S. House of Representatives for Florida’s 27th Congressional District.<sup>3</sup> The  
 3 Federal Committee is Taddeo’s principal campaign committee for her 2022 U.S. House of  
 4 Representatives campaign.<sup>4</sup>

5 On October 20, 2021, the State Committee released a campaign advertisement entitled  
 6 “Fighting Spirit,” announcing Taddeo’s campaign for Florida Governor.<sup>5</sup> On June 6, 2022, when  
 7 Taddeo withdrew from the Florida gubernatorial election, the Federal Committee released a  
 8 campaign advertisement, “Ready to Flip FL-27,” announcing Taddeo’s campaign for the U.S.  
 9 House of Representatives for Florida’s 27th Congressional District.<sup>6</sup>

10 The first minute and ten seconds of “Ready to Flip FL-27” is identical to the first minute  
 11 and ten seconds of “Fighting Spirit,” and the remaining one minute of “Ready to Flip FL-27”  
 12 contains other footage and content from “Fighting Spirit.”<sup>7</sup> The Commission possesses  
 13 information that the Federal Committee’s “Ready for FL-27” used approximately 90 seconds of  
 14 the video footage created during the State Committee’s campaign announcement production

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<sup>2</sup> Annette Taddeo for Governor Resp. (Feb. 5, 2023) [hereinafter State Comm. Resp.].

<sup>3</sup> Annette Taddeo, Amended Statement of Candidacy (June 6, 2022), <https://docquery.fec.gov/pdf/233/202206069514725233/202206069514725233.pdf>; Compl. at 1-2.

<sup>4</sup> Taddeo for Congress, Amended Statement of Organization (June 6, 2022), <https://docquery.fec.gov/pdf/633/202206069514724633/202206069514724633.pdf>.

<sup>5</sup> Senator Annette Taddeo (@senatorannettetaddeo7525), *Annette Taddeo for Florida Governor — Fighting Spirit*, YOUTUBE (Oct. 20, 2021) [hereinafter Fighting Spirit Video], <https://www.youtube.com/watch?v=vkfNA7Euoic>  
 see Compl. at 2 (citing Fighting Spirit Video).

<sup>6</sup> Senator Annette Taddeo (@senatorannettetaddeo7525), *Annette Taddeo Is Ready to Flip FL-27*, YOUTUBE (June 6, 2022) [hereinafter Ready to Flip FL-27 Video], <https://www.youtube.com/watch?v=l3rRtygbZgU>  
 see Compl. at 2 (citing Ready to Flip FL-27 Video; Jim Turner, *Annette Taddeo Withdraws as a Democratic Candidate for Governor*, WUSF PUB. MEDIA (June 7, 2022, 5:33 AM), <https://wusfnews.wusf.usf.edu/politics-issues/2022-06-07/annette-taddeo-withdraws-democratic-candidate-florida-governor>).

<sup>7</sup> Compare Ready to Flip FL-27 Video, with Fighting Spirit Video. See also Compl. at 2-4 (including screenshots of both videos and alleging that “[t]he majority of the video footage [in Ready to Flip FL-27] was the same as that from [Fighting Spirit], and in fact the first minute and beyond are identical”); *id.*, Ex. A (attaching examples of the same video footage in each advertisement).

1 shoot and as well as additional clips and sound bites. The Commission possesses information  
2 that the State Committee paid a media vendor, AL Media, \$34,768 for the video shoot and  
3 production of “Fighting Spirit.”

4 The Federal Committee did not report an in-kind contribution from or a disbursement to  
5 either the State Committee or AL Media on its first disclosure report filed with the Commission,  
6 nor did the State Committee report any receipts from the Federal Committee during that  
7 timeframe.<sup>8</sup> The Federal Committee did not report a disbursement to the State Committee until it  
8 filed its 12-Day Pre-Primary Report with the Commission on August 12, 2022, on which it  
9 reported a disbursement of \$3,000 on August 2, 2022, to the State Committee for “Video  
10 Production Footage.”<sup>9</sup> The date of the disbursement is noteworthy, as the Federal Committee  
11 apparently paid for the footage nearly two full months after it released the advertisement into  
12 which the footage was incorporated. This is also the date the Complaint in this matter was  
13 received by the Commission and four days after the Complainant published the Complaint  
14 online.<sup>10</sup>

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<sup>8</sup> See Taddeo for Congress, 2022 July Quarterly Report (July 15, 2022); Taddeo for Congress, Amended 2022 July Quarterly Report (Aug. 1, 2022); Compl. at 4 & nn.10-11. See also *Campaign Finance Database, Contributions Records*, FLA. DEP’T OF STATE, DIV. OF ELECTIONS, <https://dos.elections.myflorida.com/campaign-finance/contributions/> (last visited Nov. 16, 2023) (search for “All” under “Election Year,” “Annette Taddeo” under “Candidate Search,” and limit the “Date Range” from Jan. 1, 2022 through July 31, 2022).

<sup>9</sup> Taddeo for Congress, Amended Pre-Primary Report at 101 (Aug. 12, 2022); see also *Campaign Finance Database, Expenditures Records*, FLA. DEP’T OF STATE, DIV. OF ELECTIONS, <https://dos.elections.myflorida.com/campaign-finance/expenditures/> (last visited Nov. 16, 2023) (search for “All” under “Election Year” and “Annette Taddeo” under “Candidate Search”) (reflecting \$3,000 expenditure by State Committee to Federal Committee on August 4, 2022).

<sup>10</sup> See Compl. at 1. The Complainant appears to have released a press release about the Complaint dated July 29, 2022. See Press Release, Found. for Accountability & Civic Tr., FACT Files FEC Complaint Against FL Congressional Candidate Annette Taddeo (July 29, 2022), <https://www.factdc.org/post/fact-files-fec-complaint-against-fl-congressional-candidate-annette-taddeo>. There appears to have been at least one press report about the filing of the Complaint before the Commission officially received it. See Gabe Kaminsky, *EXCLUSIVE: Florida Dem Candidate May Have Illegally Transferred Campaign Assets, Complaint Alleges*, DAILY CALLER (July 29, 2022, 2:41 PM), <https://dailycaller.com/2022/07/29/florida-dem-annette-taddeo-campaign-assets-federal-election-commission/>.

1           The Complaint alleges that the State Committee made a prohibited contribution to  
2   Taddeo and the Federal Committee in the form of the video footage used in “Fighting Spirit” that  
3   the State Committee transferred to the Federal Committee for its use in “Ready to Flip FL-27.”<sup>11</sup>

4           The State Committee responds that it was “properly paid by the [Federal Committee] for  
5   the use of the” video footage and attaches a copy of the State Committee’s state disclosure report  
6   documenting the \$3,000 receipt on August 2, 2022.<sup>12</sup>

7           The State Committee’s campaign finance disclosures filed with the Florida Division of  
8   Elections show that the State Committee received contributions from individuals, corporations,  
9   and labor unions that do not comply with the Act’s limitations, prohibitions, and reporting  
10   requirements.<sup>13</sup>

### 11   **III. ANALYSIS**

#### 12   **A. Applicable Law**

13           The Act and Commission regulations define “contribution” as “any gift, subscription,  
14   loan, advance, or deposit of money or anything of value made by any person for the purpose of  
15   influencing any election for Federal office.”<sup>14</sup> “[A]nything of value” includes in-kind  
16   contributions, such as “the provision of any goods or services without charge or at a charge that  
17   is less than the usual and normal charge.”<sup>15</sup> Commission regulations define “usual and normal

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<sup>11</sup> Compl. at 5-6.

<sup>12</sup> State Comm. Resp.

<sup>13</sup> *Campaign Finance Database, Contributions Records*, FLA. DEP’T OF STATE, DIV. OF ELECTIONS, <https://dos.elections.myflorida.com/campaign-finance/contributions/> (last visited Nov. 16, 2023) (search for “All” under “Election Year,” “Annette Taddeo” and “Governor” under “Candidate Search,” and remove the limit on the number of records returned).

<sup>14</sup> 52 U.S.C. § 30101(8)(A)(i); *accord* 11 C.F.R. § 100.52(a); *see also* 52 U.S.C. § 30118(b)(2) (adding that “contribution” includes “any direct or indirect payment, . . . gift of money, or any services, or anything of value”).

<sup>15</sup> 11 C.F.R. § 100.52(d)(1).

1 charge” as “the price of those goods in the market from which they ordinarily would have been  
2 purchased at the time of the contribution,” or the charge for services “at a commercially  
3 reasonable rate prevailing at the time the services were rendered.”<sup>16</sup> If a committee pays fair  
4 market value for a good or service, then the transaction is not considered a contribution.<sup>17</sup> “If  
5 goods or services are provided at less than the usual and normal charge, the amount of the in-  
6 kind contribution is the difference between the usual and normal charge for the goods or services  
7 at the time of the contribution and the amount charged the political committee.”<sup>18</sup>

8 The Act and Commission regulations prohibit federal candidates, federal officeholders,  
9 their agents, and entities directly or indirectly established, financed, maintained, or controlled by  
10 federal candidates or officeholders from soliciting, receiving, directing, transferring, or spending  
11 funds in connection with an election unless the funds are subject to the limitations, prohibitions,  
12 and reporting requirements of the Act.<sup>19</sup> Under Florida law, candidates in state elections may  
13 accept contributions from corporations and unions.<sup>20</sup> Florida law permits contributions to  
14 candidates for statewide offices in amounts up to \$3,000 for any election.<sup>21</sup>

15 The Commission’s regulations explicitly prohibit “[t]ransfers of funds or assets from a  
16 candidate’s campaign committee or account for a nonfederal election to his or her principal  
17 campaign committee or other authorized committee for a federal election.”<sup>22</sup> The Commission

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<sup>16</sup> *Id.* § 100.52(d)(2).

<sup>17</sup> *See id.* § 100.52(d)(1).

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

<sup>19</sup> 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. § 300.61.

<sup>20</sup> *See* FLA. STAT. §§ 106.08, 106.11 (2022); *see also id.* § 106.011(14) (including “corporation[s]” in the definition of “[p]erson” under state campaign finance statutes).

<sup>21</sup> *Id.* § 106.08(1)(a)(1).

<sup>22</sup> 11 C.F.R. § 110.3(d). *See also* Factual & Legal Analysis (“F&LA”) at 4, MUR 5426 (Dale Schultz for Congress, *et al.*) (“Commission regulations specifically prohibit transfers of funds or assets from a candidate’s account for a non-federal election to his or her principal campaign committee for a federal election.”); F&LA at 7-8,

1 has explained that this prohibition on all transfers from a candidate’s state or local committee to  
 2 the candidate’s federal committee is intended to prevent a federal committee’s indirect use of  
 3 “soft money” raised in compliance with state, but not federal, law.<sup>23</sup> The transfer of a nonfederal  
 4 committee’s assets to the campaign committee of a candidate for federal office is permissible,  
 5 however, where the federal committee pays the fair market value or the “usual and normal  
 6 charge” for the use of such assets.<sup>24</sup> The Commission has found reason to believe and has  
 7 subsequently conciliated matters where the candidate’s federal committee does not pay the state

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MUR 5722 (Friends for Lauzen, *et al.*) (finding state committee made an in-kind contribution to a federal candidate for testing-the-waters expenses despite fact that state committee had sufficient permissible funds to cover the expenses based on prohibition in 11 C.F.R. § 110.3(d)); F&LA at 3, MUR 6219 (Kuhl for Congress) (stating that, in addition to state law allowing contributions in amounts and from sources not subject to the Act’s limitations, “none of the state campaign funds at issue were subject to the Act’s reporting provisions”); F&LA at 4, MUR 6253 (Trey Gowdy for Congress, *et al.*) (same). In MUR 7337 (Debbie Lesko, *et al.*), the Commission found reason to believe a federal candidate and her state committee violated 52 U.S.C. § 30125(e)(1)(A) by financing an independent expenditure-only political committee even though the relevant funds did not violate the Act’s source prohibitions and contribution limits because, *inter alia*, “the nature of the funds and the funds being subject to the Act’s reporting requirements are separate requirements.” F&LA at 5-9, MUR 7337 (Debbie Lesko, *et al.*).

<sup>23</sup> See Transfers of Funds from State to Federal Campaigns, 58 Fed. Reg. 3474, 3474-75 (Jan. 8, 1993) [hereinafter Transfer of Funds E&J] (explaining that the Commission was adopting a total prohibition in this circumstance because of the practical difficulty in linking or otherwise accounting for federally permissible funds available for transfer); see also F&LA at 3-4, MUR 7106 (Chappelle-Nadal for Congress) (describing 11 C.F.R. § 110.3(d) as “an extension of the Act’s soft money ban”); First Gen. Counsel’s Rpt. (“First GCR”) at 10-11 & Certification (“Cert.”) ¶¶ 1-2 (Feb. 11, 2005), MUR 5406 (Hynes for Senate) (approving a reason to believe recommendation that a dual candidate’s federal and state committees violated 11 C.F.R. § 110.3(d) by making a direct contribution from a state to federal committee and requiring disgorgement of contribution amount to U.S. Treasury).

<sup>24</sup> Transfer of Funds E&J, 58 Fed. Reg. at 3475 (“[T]he rule should not be read to proscribe the sale of assets by the state campaign committee to the federal campaign committee, so long as those assets are sold at fair market value.”); see also, *e.g.*, Advisory Opinion 1992-19 at 2 (Mike Kreidler for Congress) (approving request to permit the lease of state campaign committee’s computer equipment to candidate’s federal campaign committee); Advisory Opinion 2014-06 at 8 (Ryan, *et al.*) (finding that a candidate could rent his committee’s mailing list at fair market value to promote a book); Statement of Reasons (“SOR”), Comm’rs. Petersen, Bauerly, Hunter, McGahn & Weintraub at 5-6, MUR 6216 (Coakley for Senate, *et al.*) (explaining a finding of no reason to believe an impermissible transfer occurred where a candidate’s federal committee paid her state committee for assets including fundraising database, website redesign, domain names, and promotional materials because there was “no information to suggest that the amount paid . . . for the assets was not fair market value”); F&LA at 4-6, MURs 6474, 6534 (Citizens for Josh Mandel, *et al.*) (finding no reason to believe an impermissible transfer occurred where a candidate’s federal committee used a website domain name of his state committee because federal committee hired a third party to coordinate an arm’s length deal for state committee’s website and domain name and there was no information to suggest the transfer was provided for less than its fair market value).

1 committee for goods and services used by the federal committee.<sup>25</sup> Accordingly, a federal  
 2 committee must pay the usual and normal charge for use of the asset to the proper owner,  
 3 whether that is the state committee, the candidate, or a third-party vendor.<sup>26</sup>

4 **B. The Commission Finds Reason to Believe That the State Committee Violated**  
 5 **the Act’s Asset Transfer Requirements by Transferring an Asset to Taddeo**  
 6 **and the Federal Committee for Less Than the Usual and Normal Charge**

7 The Complaint alleges that the State Committee made a prohibited contribution to  
 8 Taddeo and the Federal Committee from when the Federal Committee used video footage in  
 9 “Ready to Flip FL-27” that was previously used in the State Committee’s “Fighting Spirit”  
 10 without paying the State Committee for the cost of the video footage.<sup>27</sup> The State Committee  
 11 does not dispute that the video footage in “Ready to Flip FL-27” was originally produced for

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<sup>25</sup> See, e.g., Conciliation Agreement (“CA”) ¶¶ IV.8-9, V.1, MUR 5426 (Dale Schultz for Congress, *et al.*) (concerning campaign worker expenses); CA ¶¶ IV.10-11, V.1-2, MUR 5646 (Cohen for N.H.) (concerning start-up expenses); CA ¶¶ IV.4-5, V.1, MUR 6257 (John Callahan, *et al.*) (concerning feasibility research); CA ¶¶ IV.6-7, 12-13, V.2-4, MUR 6267 (Jonathan Paton for Congress, *et al.*) (concerning polling and survey costs); CA ¶¶ IV.7, V.1-3, MUR 7076 (Richard Tisei, *et al.*) (concerning polling and fundraising analysis); see also F&LA at 4, 6, MUR 5636 (Russ Diamond) (finding reason to believe that a candidate and his state committee violated 11 C.F.R. § 110.3(d) where, *inter alia*, the state committee paid for website-related expenses that featured both federal and state campaigns and the pro-rated reimbursement to the state committee appeared inadequate and no basis for the calculation of the pro-rated portion was provided).

<sup>26</sup> See 11 C.F.R. § 100.52(d). Compare F&LA at 4-6, MUR 6784 (Lizbeth Benacquisto for Congress, *et al.*) (finding no reason to believe a federal committee’s use of images used in state campaign advertisement resulted in a violation where the federal committee provided copies of invoices documenting payments to the vendor, which retained ownership of the images, and there was no information indicating that the payments were below the usual and normal charges), and F&LA at 10-11, MUR 6218 (Ball4NY, *et al.*) (finding no reason to believe a federal committee had not paid the usual and normal charge for use of photographs of state officeholder and federal candidate where the committee’s treasurer averred that the federal committee purchased the rights to the photographs from the state legislature and provided supporting documentation and there was no information to the contrary), and SOR at 2, Comm’rs Walther, Petersen, Bauerly, Hunter, & Weintraub, MUR 5964 (Schock for Congress, *et al.*) (dismissing, in an exercise of prosecutorial discretion, allegations regarding a federal committee’s use of footage of state officeholder and federal candidate where the federal committee claimed it paid the vendor for use rights and for the production of DVDs containing the footage), with F&LA at 2-4, 6-9, MUR 6792 (Sean Eldridge for Congress, *et al.*) (finding reason to believe that video footage a committee received from a corporation without payment resulted in a violation). See also SOR, Comm’rs. Lindenbaum, Cooksey, Dickerson & Trainor at 5-6, MUR 7938 (Greitens for US Senate) (finding no reason to believe where a license for use of a website was documented by a contemporaneous licensing agreement executed between the committee in question and the candidate, who owned the website).

<sup>27</sup> Compl. at 4-6.

1 “Fighting Spirit”; rather, the State Committee contends the \$3,000 the Federal Committee paid  
2 on August 2, 2022, represented the fair market value for its use of the video footage.<sup>28</sup> The State  
3 Committee Response does not state who valued the use of the footage at \$3,000 or explain any  
4 basis for that valuation.<sup>29</sup>

5 While the Commission has found no reason to believe in asset-transfer matters where the  
6 respondents used third-party brokers or vendors to effectuate the transfer at fair market value or  
7 where there was no information to suggest the transfer was provided for less than fair market  
8 value, the Commission has generally looked for some degree of support for the proposition that  
9 an asset transfer was for fair market value.<sup>30</sup> Specifically, the Commission has previously found  
10 reason to believe in state-committee-asset-transfer matters where it was unclear whether the  
11 purported *pro rata* calculation for payments to the state committee for the federal committee’s

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<sup>28</sup> State Comm. Resp. (“The [State Committee] was properly paid by the [Federal Committee] for the use of the images cited in the initial complaint.”).

<sup>29</sup> *Id.*

<sup>30</sup> *See, e.g.*, F&LA at 4-6, MURs 6474, 6534 (Citizens for Josh Mandel, *et al.*) (finding no reason to believe where a candidate’s federal committee used the website domain of his state committee because federal committee hired a third party to coordinate an arm’s length deal for state committee’s website and domain name and there was no information to suggest the transfer was provided for less than its fair market value); SOR, Comm’rs. Petersen, Bauerly, Hunter, McGahn & Weintraub at 5-6, MUR 6216 (Coakley for Senate, *et al.*) (finding no reason to believe where a candidate’s federal committee paid her state committee for assets including a fundraising database, website redesign, domain names, and promotional materials because there was “no information to suggest that the amount paid . . . for the assets was not fair market value”).

1 use of the asset accurately represented the fair market value or usual and normal charge for the  
2 asset.<sup>31</sup>

3 In this matter, the State Committee does not attempt to explain why the video footage  
4 used by the Federal Committee in “Ready to Flip FL-27” was valued at \$3,000, when it cost the  
5 State Committee \$34,768 to produce the footage for a nearly identical advertisement. The State  
6 Committee does not say who made the valuation or when it was made. The State Committee  
7 does not explain whether the Federal Committee purchased the footage outright or purchased  
8 only the right to use the footage solely in “Ready to Flip FL-27.”<sup>32</sup> Given the incomplete and  
9 conflicting information, significant questions remain as to whether the Federal Committee  
10 purchased the footage for its usual and normal charge.

11 The timing of the payment is also relevant: the Federal Committee’s \$3,000 payment to  
12 the State Committee was not made until August 2, 2022, approximately two months after Taddeo  
13 debuted “Ready to Flip FL-27” on June 6, 2022; four days after the Complainant made the  
14 Complaint public on July 29, 2022, the date on the Complaint itself; and the same day the

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<sup>31</sup> See, e.g., F&LA at 5, MUR 6257 (John Callahan, *et al.*) (“[I]t is unclear on what basis the Federal Committee calculated its pro-rated share of the research that it purchased. If the Federal Committee used the entire file that [the vendor] compiled for the [local committee] . . . , then the [pro-rated amount] that the Federal Committee paid for the research . . . may not have been the usual and normal charge for that research.”); F&LA at 4, MUR 5636 (Russ Diamond) (finding an in-kind contribution by a state committee to a federal committee in the form of campaign website expenditures where the candidate “d[id] not describe the basis for [the claimed *pro rata*] calculation and the amount seems inadequate given that both campaigns appear to have been featured in equal proportions”); see also F&LA at 7-8, MURs 7628, 7636, 7992 (Kris Kobach, *et al.*) (finding reason to believe an in-kind corporate contribution was made in connection with a mailing list provided at less than the usual and normal charge where, although an affidavit was provided attesting to payment at the market rate, “the available information indicates that the . . . rental price was significantly below market rate, Respondent has been unable to articulate how the rate [paid] was determined, and [the parties] were on both sides of the rental transaction”).

<sup>32</sup> Compare State Comm. Resp. at 1 (“The [State Committee] was properly paid by the [Federal Committee] for the use of the images cited in the initial complaint.”) (emphasis added) with Campaign Finance Database, Expenditures Records, FLA. DEP’T OF STATE, DIV. OF ELECTIONS, <https://dos.elections.myflorida.com/campaign-finance/expenditures/> (last visited Nov. 16, 2023) (search for “All” under “Election Year” and “Annette Taddeo” under “Candidate Search”) (\$3,000 receipt from the Federal Committee on August 2 described in memo line as “Cost for Video Production”).



1 Complaint was marked received by the Commission.<sup>33</sup> This timing raises two concerns. First, it  
2 casts doubt on any objective valuation of the footage because the footage itself was in use long  
3 before the Federal Committee paid for it. Second, it suggests the Federal Committee made the  
4 payment in response to the Complaint rather than as part of a *bona fide* negotiated transaction for  
5 the usual and normal charge.

6 If the Federal Committee purchased a mere license to use the footage while the State  
7 Committee retained ownership of the footage, it could explain why the Federal Committee's  
8 \$3,000 disbursement to the State Committee was so much smaller than the State Committee's  
9 \$34,768 disbursement to AL Media.<sup>34</sup> But the contemporaneous records appear to memorialize a  
10 sale of ownership of the footage rather than a sale of a license to use the footage.<sup>35</sup> The State  
11 Response does not attempt to explain this discrepancy.

12 The information here counsels a different course of the action than the Commission took  
13 in MUR 6784 (Lizbeth Benacquisto for Congress), in which the Commission found no reason to  
14 believe that a violation occurred. The complaint in that matter alleged a transfer of value from a  
15 candidate's state committee to her federal committee after the candidate's federal committee  
16 used images in an advertisement that were initially produced for an advertisement for her state  
17 committee.<sup>36</sup> In that matter, the Commission found no reason to believe the respondents had

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<sup>33</sup> See Compl. at 1; Press Release, *supra* note 10.

<sup>34</sup> See State Comm. Resp. at 1 ("The [State Committee] was properly paid by the [Federal Committee] for the use of the images cited in the initial complaint.") (emphasis added).

<sup>35</sup> The Federal Committee's August 12, 2022 Pre-Primary Report discloses an August 2 disbursement to the State Committee for "Video Production Footage." Taddeo for Congress, Amended Pre-Primary Report at 101 (Aug. 12, 2022)). The State Committee's state filing describes the \$3,000 receipt as "Cost for Video Production." State Comm. Resp. at 1.

<sup>36</sup> F&LA at 2-3, MUR 6784 (Lizbeth Benacquisto for Congress).

1 violated the Act because none of the available information indicated that the federal committee  
2 had failed to purchase the images “under current market practices and at the normal and usual  
3 charges.”<sup>37</sup>

4 The instant matter differs from MUR 6784 in three significant ways. First, the federal  
5 committee in that matter purchased the media in question from a third-party vendor, not directly  
6 from the state committee.<sup>38</sup> Second, that third-party vendor made the valuation of the media in  
7 question, and the media was not appraised or priced by either the state or federal committee.  
8 Third, Benacquisto’s federal committee was invoiced for the media the same day that its  
9 advertisement was broadcast, and it paid the invoice 10 days later, reporting the transaction  
10 timely on its Pre-Primary Report.<sup>39</sup> By contrast, here the Federal Committee bought the media  
11 directly from the State Committee; the State Committee has not provided any information  
12 concerning who made the valuation; and the transaction went unbilled and unreported for nearly  
13 two months, not appearing in either committee’s reports until days after the Complaint in this  
14 matter was made public. Thus, MUR 6784 is clearly distinguishable from the instant matter.

15 This matter is similarly distinguishable from MUR 5964 (Schock for Congress), another  
16 state-committee-asset-transfer matter. First, as in MUR 6784 (Lizbeth Benacquisto for  
17 Congress) — and unlike the instant matter — the valuation at issue in MUR 5964 (Schock for  
18 Congress) was made by a third-party vendor.<sup>40</sup> Second, the Commission voted not to pursue the

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<sup>37</sup> *Id.* at 6.

<sup>38</sup> *Id.* at 5-6 (“Respondents also provided copies of the invoices and disclosure reports reflecting the Federal Committee’s payment to Meteoric Media[.]”).

<sup>39</sup> *Id.* at 5-6 nn.20-21.

<sup>40</sup> *See* SOR at 2, Comm’rs Walther, Petersen, Bauerly, Hunter, and Weintraub, MUR 5964 (Schock for Congress, *et al.*).

1 matter because “the relatively small amount potentially in violation” did not warrant “further use  
2 of the Commission’s limited resources.”<sup>41</sup> That amount was \$750. Here, the potential amount in  
3 violation is somewhere between the \$3,000 the Federal Committee paid to use the footage and  
4 the \$34,768 the State Committee paid to create the footage.<sup>42</sup> That is greater than the \$750 at  
5 issue in MUR 5964 (Schock for Congress) and in other, prior *de minimis* dismissals.<sup>43</sup> For those  
6 reasons, the relevant information here differs from that in MUR 5964 (Schock for Congress), and  
7 the resolution must as well.

8           The available information before the Commission — and, critically, the information not  
9 before the Commission — supports finding reason to believe here. The Federal Committee did  
10 not pay the State Committee for the video footage used in “Ready to Flip FL-27” until nearly  
11 two months after it aired the completed ad; when the Federal Committee did pay for the footage,  
12 the Federal Committee paid less than a tenth of what the State Committee paid to produce the  
13 footage.<sup>44</sup> The State Committee does not explain why the Federal Committee paid what it did,  
14 nor does it make clear who decided what the Federal Committee would pay. The State  
15 Committee alludes to but does not explain the prospect that the Federal Committee paid only for  
16 a right to use the footage in “Ready to Flip FL-27,” but that is complicated by contemporaneous  
17 documentation reflecting the purchase of footage, not a license.<sup>45</sup>

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<sup>41</sup> *Id.* at 3. The actual cost of the footage at issue there was never determined, but the Commissioners still characterized the “amount potentially in violation” as *de minimis*.

<sup>42</sup> *See* 11 C.F.R. 100.52(d)(1).

<sup>43</sup> *See, e.g.*, F&LA at 2, MUR 7367 (Anthony Brindisi) (\$2,000 alleged amount in violation); F&LA at 2-3, MUR 7338 (Rick for Congress) (\$1,940.48 alleged amount in violation).

<sup>44</sup> State Comm. Resp. at 1.

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

1           Based on the available information, the \$3,000 the Federal Committee paid to the State  
2 Committee for use of the video footage in “Ready to Flip FL-27” does not appear to accurately  
3 reflect the market value of the footage, which the State Committee paid \$34,768 to produce.  
4 Because the Act generally limits federal officeholders to raising and spending funds that comply  
5 with the Act’s amount limitations, source prohibitions, and reporting requirements, the Act also  
6 prevents transfers of assets from a federal candidate’s former state committee — which may  
7 have access to funds raised outside of the Act’s limits and prohibitions — to the candidate’s  
8 current federal committee.<sup>46</sup> Assets sold for their fair market value or at their usual and normal  
9 charge are excepted from this prohibition.<sup>47</sup> The available information is not sufficient to show  
10 that the Federal Committee paid the usual and normal charge in exchange for what it received.  
11 As a result, the State Committee appears to have impermissibly transferred an asset to the  
12 Federal Committee of a value equal to the difference between the \$3,000 the Federal Committee  
13 paid for use of the footage and the actual market value of that use, which is a violation of the  
14 Act’s soft-money prohibitions.

15           The Commission therefore finds reason to believe that the State Committee violated  
16 11 C.F.R. § 110.3(d) by making an impermissible transfer of an asset to a federal committee.

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<sup>46</sup> 11 C.F.R. § 110.3(d).

<sup>47</sup> Transfer of Funds E&J, 58 Fed. Reg. at 3475 (“[T]he rule should not be read to proscribe the sale of assets by the state campaign committee to the federal campaign committee, so long as those assets are sold at fair market value.”).