

BEFORE THE
FEDERAL ELECTION COMMISSION

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FEDERAL ELECTION COMMISSION
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OFFICE OF GENERAL COUNSEL

Garrett Petersen

MUR 8062

East Islip, NY 11730

Complainant,

v.

Andrew Garbarino

Bayport, NY 11705

Garbarino for Congress and Lisa Lisker, Treasurer
PO Box 101
Bayport, NY 11705

Friends of Andrew Garbarino
PO Box 101
Bayport, NY 11705

Respondents,

COMPLAINT

This complaint is filed under 52 U.S.C. § 30109(a)(1) against Andrew Garbarino, Garbarino for Congress and Lisa Lisker in her official capacity as treasurer (the "Federal Committee"), and Friends of Andrew Garbarino (the "State Committee"), collectively the "Respondents," for violating the Federal Election Campaign Act of 1971, as amended (the "Act") and Federal Election Commission (the "FEC" or "Commission") regulations. Garbarino made a transfer of \$800 from his State Committee to his Federal Committee, in apparent violation of the Act's "soft money" prohibitions and 11 C.F.R. § 110.3(d). Moreover, Garbarino appears to have used his State Committee to pay the expenses of his federal campaign. Garbarino's State Committee reported expenses to the same vendor providing services to the

Federal Committee, and these expenses were for “campaign literature” and “fundraising” even though he was not a candidate for state office during that time. These descriptions suggest he used the State Committee impermissibly to support his Federal Committee. Finally, the State Committee continued to spend soft money in connection with nonfederal elections after Garbarino became a federal candidate. Subsidizing a federal campaign with soft money is the precise harm the Bipartisan Campaign Reform Act sought to prevent, and Garbarino’s apparent actions seriously undermine the Act’s anti-corruption and anti-circumvention rationales. The Commission should immediately investigate these actions and take appropriate remedial steps against Respondents.

FACTS

Andrew Garbarino was elected to the U.S. House of Representatives for New York’s 2nd Congressional District in 2020. Prior to his election to the U.S. House, he served as New York State Assemblyman for the 7th district.¹ His state campaign committee was Friends of Andrew Garbarino.² During the 2020 election cycle, Garbarino was not a candidate for reelection to the Assembly.³ Rather, Garbarino was running for the U.S. House of Representatives in New York’s 2nd Congressional District.⁴ He filed his Statement of Candidacy with the Commission on

¹ See, e.g., N.Y.S. Bd. Of Elections, Certified Results for the November 6, 2018 General Election for NYS Assembly, <https://www.elections.ny.gov/NYSBOE/elections/2018/general/2018Assembly.pdf>.

² N.Y.S. Bd. Of Elections, Candidate/Committee Disclosures Search, Andrew Garbarino, <https://publicreporting.elections.ny.gov/CandidateCommitteeDisclosure/CandidateCommitteeDisclosure> (last visited August 21, 2022).

³ See *Certified Results from the June 23, 2020 Primary Election*, N.Y.S. Bd. Of Elections, <https://www.elections.ny.gov/NYSBOE/elections/2020/Primary/CertifiedJune232020StatePrimaryResults.pdf> (noting no candidates for the 7th district); *Certified 2020 General Election Results for New York State Assembly*, N.Y.S. Bd. Of Elections, <https://www.elections.ny.gov/2020ElectionResults.html> (listing Francis Genco as Democratic Party candidate and Jarett Gandolfo as candidate on the Republican, Conservative, and Independent party lines).

⁴ See *id.*; Andrew Garbarino, FEC Form 2, Statement of Candidacy (Dec 6, 2019), <https://docquery.fec.gov/pdf/111/2019/206916616|111/2019/206916616|111.pdf>.

December 6, 2019.⁵ On the same day, he filed his Statement of Organization designating Garbarino for Congress as his principal campaign committee for federal office.⁶

Around three months after he became a U.S. House candidate, on March 2, 2020, Garbarino's State Committee contributed \$800 to his Federal Committee.⁷ The Federal Committee reported the transfer as a contribution from Friends of Andrew Garbarino for the primary election with the following notation: "Nonfederal-Permissible funds."⁸

In addition, from May 2020 to September 2020, during the time in which Garbarino was campaigning for federal office, his state campaign made over \$10,000 in disbursements for campaign expenses.⁹ As noted above, during this period, Garbarino was not running for state office. The State Committee's reported expenses are reflected below.

Date	Recipient	Purpose Code	Amount
4/9/2020	CCC Enterprises	Campaign Consultant	\$1,800
5/11/2020	CCC Enterprises	Campaign Literature	\$1,000
5/14/2020	Schneps Media	Print Ads	\$850
6/19/2020	CCC Enterprises	Campaign Literature	\$1,000
7/29/2020	Land's End	Fundraising	\$300
7/31/2020	Land's End	Fundraising	\$2,172.50
8/6/2020	CCC Enterprises	Campaign Literature	\$1,500

⁵ Andrew Garbarino, FEC Form 2, Statement of Candidacy (Dec 6., 2019), <https://docquery.fec.gov/pdf/111/201912069166161111/201912069166161111.pdf>.

⁶ Garbarino for Congress, FEC Form 1, Statement of Organization (Dec. 6, 2019), <https://docquery.fec.gov/pdf/521/201912069166160521/201912069166160521.pdf>.

⁷ N.Y.S. Bd. Of Elections, Candidate/Committee Disclosures Search, Friends of Andrew Garbarino, 2020 July Periodic Report (July 17, 2020), <https://publicreporting.elections.ny.gov/CandidateCommitteeDisclosure/CandidateCommitteeDisclosure>.

⁸ Garbarino for Congress, 2020 April Quarterly Report at 34 (Apr. 15, 2020), <https://docquery.fec.gov/pdf/379/202004159216948379/202004159216948379.pdf#navpanes=0>.

⁹ N.Y.S. Bd. Of Elections, Candidate/Committee Disclosures Search, Friends of Andrew Garbarino, 2020 July Periodic Report (July 17, 2020) & 2021 January Periodic Report (Jan. 19, 2021), <https://publicreporting.elections.ny.gov/CandidateCommitteeDisclosure/CandidateCommitteeDisclosure>.

8/28/2020	CCC Enterprises	Campaign Literature	\$1,000
9/19/2020	CCC Enterprises	Campaign Literature	\$1,000
		TOTAL	\$10,622.50

As reflected in the above chart, the State Committee made \$7,300 in disbursements to CCC Enterprises between April and September for campaign-related services. In the same time period, the Federal Committee also disclosed disbursements to CCC Enterprises.¹⁰ The Federal Committee's payments to CCC Enterprises are itemized below.

Date	Recipient	Purpose Description	Amount
5/12/2020	CCC Enterprises	Signage	\$12,950.94
8/6/2020	CCC Enterprises	Digital Consulting	\$12,250.00
9/28/2020	CCC Enterprises	Signage	\$7,284.57
		Total	\$32,485.51

Further, the State Committee continued accepting contributions, including from corporations and a New York state political committee. Its \$3,550 of non-individual receipts from January 2020 through August 2020 appear in the table below.¹¹

Name	Date	Amount
Lawpac of New York	1/14/2020	\$1,000
S C Restaurant & Tavern Assoc Inc	2/21/2020	\$1,000
Brightwaters Building Company Inc	3/9/2020	\$300
Carco Group Inc	4/4/2020	\$200
Cornell Design Corp	4/4/2020	\$100
Sir Corp	4/4/2020	\$150

¹⁰ Garbarino for Congress, 2019-2020 Disbursements, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00729954&recipient_name=ccc&two_year_transaction_period=2020 (last visited Aug. 21, 2022).

¹¹ See N.Y.S. Bd. Of Elections, Candidate/Committee Disclosures Search, Friends of Andrew Garbarino, 2020 July Periodic Report (July 17, 2020) & 2021 January Periodic Report (Jan. 19, 2021), <https://publicreporting.elections.ny.gov/CandidateCommitteeDisclosure/CandidateCommitteeDisclosure>.

Alexios Apazidis Md Pc	8/24/2020	\$500
Panzner Demolition and Abatement Corp	8/27/2020	\$150
Richard E Wankel Pc	8/27/2020	\$150
Total		\$3,550

Finally, after Garbarino became a federal candidate, the State Committee made at least twenty contributions totaling \$30,700 to candidates and committees in connection with nonfederal elections.¹² Those contributions appear below.

Name	Date	Amount
Nassau County Republican Committee	1/12/2020	\$250
Scgop	1/21/2020	\$1,000
Brookhampton Conservative Party	1/28/2020	\$1,000
Islip Town Conservative Exec Committee	2/5/2020	\$250
Nassau County Conservative Party	2/6/2020	\$350
Republican Assembly Campaign Committee	2/24/2020	\$250
Lalota for New York	3/13/2020	\$5,000
Friends of Andrew Rai	3/16/2020	\$1,000
Scgop	4/9/2020	\$500
Friends of Jarett Gandolfo	6/19/2020	\$4,800
Republican Assembly Campaign Committee	7/31/2020	\$5,000
Nassau County Republican Committee	8/3/2020	\$2,000
Republican Assembly Campaign Committee	8/18/2020	\$5,000
Brookhampton Conservative Party	8/28/2020	\$500
Friends of Tom O'Mara	8/28/2020	\$1,000
Friends of Tony Palumbo	8/28/2020	\$1,000
Boyle for Senate	9/15/2020	\$500
Nassau County Republican Committee	9/20/2020	\$200
Nassau County Republican Committee	9/28/2020	\$100
Friends of Jim O'Connor	1/10/2021	\$1,000
Total		\$30,700

¹² See *supra* note 11.

LEGAL DISCUSSION

The Act's soft money provisions prohibit federal candidates, their agents, and entities established, financed, maintained, or controlled by federal candidates from soliciting, receiving, directing, transferring, or spending funds in connection with any federal or non-federal elections, unless the funds are in amounts and from sources permitted by the Act.¹³ The Commission has concluded that the state committee of a federal candidate is established, financed, maintained, or controlled by a federal candidate within the meaning of the Act.¹⁴

Federal candidates are also prohibited from transferring funds or assets from their state committees to their federal committees.¹⁵ The prohibition on transferring funds applies broadly and includes payment for services to the federal committee.¹⁶

A. Transfers from the State to Federal Committee

There is clear evidence that Garbarino's state campaign directly transferred \$800 to his federal campaign.¹⁷ Although the Federal Committee's report has a memo entry stating "Nonfederal-Permissible funds," the Commission has not created an exception to the transfer prohibition at 11 C.F.R. § 110.3(d). The transfer prohibition is a bright-line rule, which Garbarino and the Committees seem to have clearly violated.¹⁸

¹³ 52 U.S.C. § 30125(e)(1)(A)-(B); 11 C.F.R. §§ 300.61-62.

¹⁴ Advisory Op. 2007-26 (Schock) at 4; Advisory Op. 2006-38 (Casey State Committee) at 4.

¹⁵ 11 C.F.R. § 110.3(d) ("Transfers of funds or assets from a candidate's campaign committee or account for a nonfederal election to his or her principal campaign committee or other authorized committee for a federal election are prohibited.").

¹⁶ See, e.g., MUR 6276 (Paton for Senate); MUR 5646 (Cohen for New Hampshire); MUR 5426 (Dale Schultz for Congress).

¹⁷ Garbarino for Congress, 2020 April Quarterly Report at 34 (Apr. 15, 2020).

¹⁸ <https://docquery.fec.gov/pdf/379/202004159216948379/202004159216948379.pdf#navpanes=0>.

¹⁸ See 11 C.F.R. § 110.3(d).

B. Excessive and Impermissible In-kind Contributions

Furthermore, since Garbarino became a federal candidate, the State Committee has paid \$10,622.50 for campaign literature, fundraising, and related consulting expenses, including \$7,300 paid to a vendor that was simultaneously performing work for the Federal Committee.¹⁹ Despite spending thousands of dollars on these expenses from the State Committee, Garbarino was neither campaigning for, nor was he seeking ballot access for, any New York State office in the 2020 election cycle. Thus, there is no logical reason his State Committee needed to make payments to a campaign consultant, much less \$10,000 worth of campaign consulting services for “campaign literature” and “fundraising.” Rather, it seems more likely that the State Committee made these payments in connection with Garbarino’s federal campaign—*his only active campaign at the time*. The Commission should immediately investigate this potential violation, as the \$10,622.50 paid by the State Committee would constitute another unlawful excessive in-kind from the State Committee to the Federal Committee.²⁰

C. State Committee Receipts and Disbursements

It also appears that Garbarino continued to spend and receive funds that were not compliant with the Act’s amount and source restrictions in direct violation of federal law. The State Committee became an entity controlled or maintained by a federal candidate when Garbarino filed his statement of candidacy for the U.S. House on December 6, 2019. Yet, as detailed in the chart above, the State Committee accepted \$3,550 in contributions from corporations.²¹ Accepting corporate contributions to the State Committee as a federal candidate

¹⁹ See *supra* notes 9-10.

²⁰ See 11 C.F.R. § 110.3(d).

²¹ See *supra* note 12. Further, the State Committee also accepted a \$1,000 contribution from a state political committee. Because New York State political committees may themselves accept unlimited contributions and contributions from corporations, the political committee also contributed soft money to the State Committee. N.Y.S. Bd. of Elections, CAMPAIGN FINANCE HANDBOOK 48 (2019).

is "receiving" soft money in connection with a federal or nonfederal election, in violation of the law.²²

In addition, the State Committee spent \$30,700 in connection with nonfederal elections after Garbarino became a federal candidate.²³ The State Committee made contributions to nonfederal candidates and political party committees that spend their funds to influence nonfederal elections.²⁴ As just mentioned, the State Committee was receiving impermissible funds in its account at the time it made these contributions, and there is no evidence that the State Committee instituted a reasonable accounting method, or even had enough federally permissible funds available, to ensure that the contributions were made with hard money. Accordingly, it also appears that Garbarino and his State Committee violated the Act's ban on spending soft money in connection with nonfederal elections.²⁵

REQUESTED ACTION

As demonstrated above, Respondents appear to have violated the Act and Commission regulations by receiving and spending soft money funds after Garbarino became a federal candidate. Garbarino's State Committee also transferred funds and seem to have made impermissible in-kind contributions to his Federal Committee, in plain violation of Commission regulations. As such, we respectfully request that the Commission immediately investigate these violations, fine Respondents the maximum amount permitted by law, require the Federal Committee to disgorge the unlawful funds it received from the State Committee, and enjoin Respondents from further violations of the law.

<https://www.elections.ny.gov/NYSBOE/download/finance/hndbk2019.pdf> (stating that there is no limit on how much a New York State PAC may accept from a contributor and that corporations are allowed to contribute).

²² See 52 U.S.C. § 30125(e)(1)(A)-(B); 11 C.F.R. §§ 300.61-62.

²³ See *supra* note 12.

²⁴ See *id.*

²⁵ See 52 U.S.C. § 30125(e)(1)(B); 11 C.F.R. § 300.62.

Sincerely,

Garrett Petersen
3214 Union Blvd
East Islip, NY 11730

SUBSCRIBED AND SWORN to before me this 31 day of August 2022.



Notary Public



My Commission Expires:

