

November 22, 2022

Roy Q. Lockett
Acting Assistant General Counsel
Complaints Examination &
Legal Administration
Federal Election Commission
1050 First Street, NE
Washington, DC 20463

Re: Representative Andrew Garbarino, Garbarino for Congress, Lisa Lisker, in her capacity as Treasurer, and Friends of Andrew Garbarino in MUR 8062

Dear Mr. Lockett,

This Response is submitted by the undersigned counsel of behalf of Representative Andrew Garbarino, Garbarino for Congress, Lisa Lisker, in her capacity as Treasurer, and Friends of Andrew Garbarino (collectively “Respondents”), in response to the Complaint designated as Matter Under Review 8062. By letter dated September 8, 2022, we requested an extension to respond to the Complaint, and that request was granted by letter dated September 22, 2010.

The Complainant filed its Complaint on or about September 2, 2022, and alleges that Respondents, violated the Federal Election Campaign Act of 1971, as amended, (the “Act”) “by spending and receiving soft money funds after Garbarino became a federal candidate”¹ and making a “transfer of \$800 from his state committee to his federal committee.”² While Respondents contend that a transfer of \$800 was made to his federal committee, the allegations made in the Complaint are without merit, fail to withstand scrutiny, and the Complaint should be dismissed.

I. The Complaint Does Not Meet the Basic Standard For Finding Reason To Believe

Complainant presents absolutely no evidence whatsoever that any excessive impermissible in-kind contributions actually occurred. The Complaint presents nothing but speculation and draws conclusions that are simply incorrect. The Commission has repeatedly held that “[u]nwarranted legal conclusions from asserted facts ... or mere speculation ... will not

¹ Compl. at 8.

² *Id.* at 1.

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be accepted as true. . . . Such purely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find reason to believe that a violation of the FECA has occurred.” Statement of Reasons in MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee); *see also* MUR 6077 (Norm Coleman et al.), Factual and Legal Analysis; Statement of Reasons in MUR 5141 (James P. Moran, Jr.) (“A complainant’s unwarranted legal conclusions from asserted facts, will not be accepted as true.”).

In the Complaint, Garrett Peterson alleges that Respondents violated the Act’s soft money prohibitions because the state committee reported expenditures described as “campaign literature, fundraising, and related consulting expenses.”³ To the extent that the nonfederal committee expenditures use descriptions like “campaign literature” and “fundraising” those terms are misleading. The event described as “fundraising” was, in fact, an event without any solicitation component meant as a thank you to donors and those who had been helpful to State Representative Garbarino during his time in Albany. The term “campaign” when describing literature and consultant also encompassed communications with the State Representative Garbarino’s constituents about his legislative accomplishments.

Even if that were not the case, however, there is nothing that precluded State Representative Garbarino from getting his name on the ballot to retain his state seat in the event that he lost his federal primary. He was perfectly within his rights to pursue that seat despite the complaint’s misleading and nondescript language “nor was he seeking ballot access.”⁴ In fact, Complainant does not have any actual knowledge or evidence to show what Andrew Garbarino was seeking and “there is no logical reason”⁵ is not the Commission’s reason to believe (“RTB”) standard.

The Complainant goes on to allege further violations simply because the state committee utilized services of a vendor that was simultaneously performing work for the Federal Committee. Merely contracting with the same vendor does not indicate any improper use of funds. The Complaint uses language like “it seems more likely”⁶ these were for his federal campaign and that simply is not the Commission’s RTB standard. The Complaint, however, presents no actual evidence of the state committee paying expenses on behalf of the Federal Committee.

The only evidence cited in the Complaint for the alleged “excessive impermissible in-kind contribution” consists merely of categorical reporting descriptions of these nonfederal committee expenditures without any actual support for their claim that these somehow benefitted the Congressman’s federal campaign beyond the assertion that the state committee would have “no logical reason” to make campaign expenditures of this kind. Also, merely contracting with the same vendor does not indicate any improper use of funds. The complaint uses language like “it seems more likely” these were for his federal campaign and that simply is not the Commission’s RTB standard.

³ *Id.* at 3.

⁴ *Id.* at 7.

⁵ *Id.*

⁶ *Id.*

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In past matters, the Commission has not undertaken such fishing expeditions, and instead sensibly required credible and actual evidence of wrongdoing as a predicate to finding reason to believe. As three Commissioners have noted, “The RTB [reason to believe] standard does not permit a complainant to present mere allegations that the Act has been violated and request that the Commission undertake an investigation to determine whether there are facts to support the charges.” MUR 6056 (Protect Colorado Jobs, Inc.), Statement of Reasons of Matthew S. Petersen, Caroline C. Hunter, and Donald F. McGahn at 6, n.12.

II. The FEC Has Dismissed Certain Complaints Alleging Violations If The Amounts At Issue Are De Minimis

Respondents concede the fact that Congressman Garbarino’s nonfederal committee did make a contribution to his authorized federal campaign committee in the amount of \$800. While 11 CFR § 110.3(d) prohibits “[t]ransfers of funds ... from a candidate’s campaign committee or account for a nonfederal election to his or her principal campaign committee ... for a federal election,” the FEC has dismissed certain complaints alleging violations of this provision if the amounts at issue are relatively low. For example, in MUR 7367 (Brindisi), the facts established that a candidate’s state committee made two \$1,000 contributions to his federal committee. Nevertheless, the FEC dismissed the complaint on prosecutorial discretion grounds “[s]ince the amount at issue is de minimis.”

III. Nonfederal Committee Revenue Raising Is Not A Matter Within The FEC’s Jurisdiction

Complainant also found issue with the state committee’s revenue raising. The Complaint states, “Further, the State Committee continued accepting contributions, including from corporations and New York state political committee.” However, contributions to nonfederal committees are subject to state and local laws, not the Federal Election Campaign Act. This allegation should be immediately dismissed. It is a weak attempt to harass Respondents, and is an abuse of the Commission’s complaint process.

IV. Conclusion

The Complaint’s allegations are not supported by any actual evidence that the Respondents acted in violation of the Act beyond a contribution to the federal committee in the amount of a mere \$800. The Complaint fails to provide the FEC with anything more than speculation and, therefore, does not stand up to the RTB standard. Respondents concede that a transfer of \$800 was made to the federal committee, but de minimis amounts such as this have been dismissed by the FEC in the past. The Commission should therefore dismiss the Complaint in its entirety.

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Sincerely,

A handwritten signature in blue ink, appearing to be "CW", enclosed in a thin black rectangular border.

Chris Winkelman
Elizabeth Ellington Kemp
*Counsel to Representative
Andrew Garbarino, Garbarino for Congress, Lisa
Lisker, in her capacity as Treasurer, and Friends of
Andrew Garbarino*