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1 **FEDERAL ELECTION COMMISSION**
 2 **FIRST GENERAL COUNSEL'S REPORT**

SENSITIVE**MUR 8062**

5 DATE COMPLAINT FILED: Sept. 2, 2022
 6 DATE OF NOTIFICATIONS: Sept. 8, 2022
 7 DATE OF LAST RESPONSE: Nov. 22, 2022
 8 DATE ACTIVATED: Feb. 2, 2023

10 EXPIRATION OF SOL: Jan. 12, 2025 (earliest)
 11 Jan. 10, 2026 (latest)

12 ELECTION CYCLE: 2020

COMPLAINANT:

Garrett Petersen

RESPONDENTS:

16 Andrew Garbarino
 17 Friends of Andrew Garbarino
 18 Garbarino for Congress and Lisa Lisker in her
 19 official capacity as treasurer

21 **RELEVANT STATUTES**
 22 **AND REGULATIONS:**

23 52 U.S.C. § 30104(b)
 24 52 U.S.C. § 30125(e)(1)(A)-(B)
 25 11 C.F.R. § 110.3(d)

INTERNAL REPORTS CHECKED:

Disclosure Reports

AGENCIES CHECKED:

New York State Board of Elections

I. INTRODUCTION

31 The Complaint in this matter alleges that 2020 U.S. House candidate Andrew Garbarino,
 32 Garbarino for Congress and Lisa Lisker in her official capacity as treasurer (the “Federal
 33 Committee”), and Friends of Andrew Garbarino (the “State Committee”) (collectively,
 34 “Respondents”) violated the soft money prohibition of the Federal Election Campaign Act of
 35 1971, as amended (the “Act”), and Commission regulations in several ways. First, the
 36 Complaint alleges that Garbarino and the Federal Committee accepted an \$800 transfer from the
 37 State Committee. Second, it alleges that the State Committee made in-kind contributions
 38 totaling \$10,622.50 to the Federal Committee by paying for several of Garbarino’s federal

1 campaign expenses. Finally, the Complaint alleges that the State Committee received \$3,550 in
2 corporate contributions after Garbarino became a federal candidate, and was no longer a state
3 candidate, and contributed \$30,700 to state and local candidates and committees without
4 instituting a reasonable accounting method to ensure such contributions were not made with soft
5 money.

6 Respondents admit that the State Committee contributed \$800 to the Federal Committee
7 but argue that the amount is *de minimis* and should be dismissed. As to the allegations that the
8 State Committee paid for Garbarino's federal campaign expenses, Respondents contend that the
9 allegations do not satisfy the Act's reason to believe standard to warrant an investigation.
10 Finally, they argue that the State Committee's receipt of corporate contributions and making
11 contributions in nonfederal elections are outside the Commission's jurisdiction.

12 For the reasons set forth below, we recommend that the Commission find reason to
13 believe that Respondents violated 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d) in
14 connection with the State Committee's \$800 transfer to the Federal Committee. We also
15 recommend that the Commission find reason to believe that Garbarino and the State Committee
16 violated 52 U.S.C. § 30125(e)(1)(B) by receiving and spending nonfederal funds in connection
17 with an election for nonfederal office. We further recommend that the Commission find reason
18 to believe that Garbarino and the State Committee violated 52 U.S.C. § 30125(e)(1)(A) and
19 11 C.F.R. § 110.3(d) by spending nonfederal funds in connection with an election for federal
20 office. Finally, we recommend that the Commission find reason to believe that the Federal
21 Committee violated 52 U.S.C. §§ 30104(b), 30125(e)(1)(A) and 11 C.F.R. § 110.3(d) by
22 receiving, and failing to report, in-kind contributions from the State Committee in connection
23 with an election for federal office.

1 II. FACTUAL BACKGROUND

2 Andrew Garbarino is the U.S. Representative for New York's 2nd Congressional District,
3 having first won election to federal office in 2020.¹ He filed his initial statement of candidacy on
4 December 6, 2019.² Garbarino for Congress is his principal campaign committee.³ Prior to
5 serving in Congress, Garbarino was a member of the New York State Assembly from 2013 to
6 2020.⁴ The available information indicates he was not a candidate for state office in 2020.⁵ His
7 now terminated state campaign committee was Friends of Andrew Garbarino.⁶

8 The State Committee's receipts from December 6, 2019 (the date of Garbarino's
9 Statement of Candidacy) to November 3, 2020 (Election Day), as reported to the New York State
10 Board of Elections, are shown in Figure 1.⁷ It shows that the State Committee received a total of

¹ New York State Board of Elections, 2020 Election Results, <https://www.elections.ny.gov/2020ElectionResults.html> (select "U.S. Congress"). Garbarino was sworn in on January 3, 2021. Andrew Garbarino, <https://garbarino.house.gov/media/press-releases/congressman-andrew-garbarino-sworn-117th-congress>. Garbarino was reelected in 2022. *See* New York State Board of Elections, 2022 Election Results, <https://www.elections.ny.gov/2022ElectionResults.html> (select "Representative in Congress").

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

³ Statement of Organization, Garbarino for Congress (Jan. 22, 2023), <https://docquery.fec.gov/pdf/078/202301229574895078/202301229574895078.pdf>.

⁴ *See* Certified Results from the November 6, 2018 General Election for NYS Assembly at 4, <https://www.elections.ny.gov/NYSBOE/elections/2018/general/2018Assembly.pdf>; NYS Board of Elections Assembly Election Returns Nov. 8, 2016 at 2, <https://www.elections.ny.gov/NYSBOE/elections/2016/General/2016Assembly.pdf>; NYS Board of Elections Assembly Election Returns November 4, 2014 at 2, <https://www.elections.ny.gov/NYSBOE/elections/2014/general/2014Assembly.pdf>; NYS Board of Elections Assembly Election Returns Nov. 6, 2012 at 2, https://www.elections.ny.gov/NYSBOE/elections/2012/General/AD_04-09-2013.pdf.

⁵ Garbarino is not listed as a candidate for any state primary races in 2020. NYS Board of Elections, Certified Election Results from the June 23, 2020 Primary Election, <https://www.elections.ny.gov/NYSBOE/elections/2020/Primary/CertifiedJune232020StatePrimaryResults.pdf>.

⁶ New York State Board of Elections, Search Candidates and Campaign Disclosures, <https://publicreporting.elections.ny.gov/CandidateCommitteeDisclosure/CandidateCommitteeDisclosure> (search within terminated "Candidate/Committee Disclosures" for "Andrew Garbarino").

⁷ *Id.* (select "January Periodic" for the 2021 Filing Year and "July Periodic" for the 2020 Filing Year).

1 \$4,550 in contributions, of which \$2,550 (56.04%) came from corporations, \$1,000 (21.98%)
 2 came from Rechler Equity LLC, and \$1,000 (21.98%) came from LawPAC of NY.

3 **Figure 1**
 4

State Committee Contributions Received			
Transaction Date	Transaction Type	Entity Name	Amount
1/14/2020	C - Monetary Contributions Received From All Other	Lawpac Of New York	\$1,000.00
2/21/2020	B - Monetary Contributions Received From Corporation	S C Restaurant & Tavern Assoc Inc	\$1,000.00
3/9/2020	B - Monetary Contributions Received From Corporation	Brightwaters Building Company Inc	\$250.00 ⁸
4/4/2020	B - Monetary Contributions Received From Corporation	Carco Group Inc	\$200.00
4/4/2020	B - Monetary Contributions Received From Corporation	Cornell Design Corp	\$100.00
4/4/2020	B - Monetary Contributions Received From Corporation	Sir Corp	\$150.00
7/19/2020	C - Monetary Contributions Received From All Other	Rechler Equity I LLC	\$1,000.00
8/24/2020	B - Monetary Contributions Received From Corporation	Alexios Apazidis Md Pc	\$500.00
8/27/2020	B - Monetary Contributions Received From Corporation	Panzner Demolition And Abatement Corp	\$150.00
8/27/2020	B - Monetary Contributions Received From Corporation	Richard E Wankel Pc	\$100.00 ⁹
9/1/2020	B - Monetary Contributions Received From Corporation	The Groneman Group Inc	\$100.00 ¹⁰
		TOTAL	\$ 4,550

5 The State Committee's expenditures for the same period are listed in Figure 2. It shows
 6 that the State Committee spent a total of \$61,605 on the following categories: political

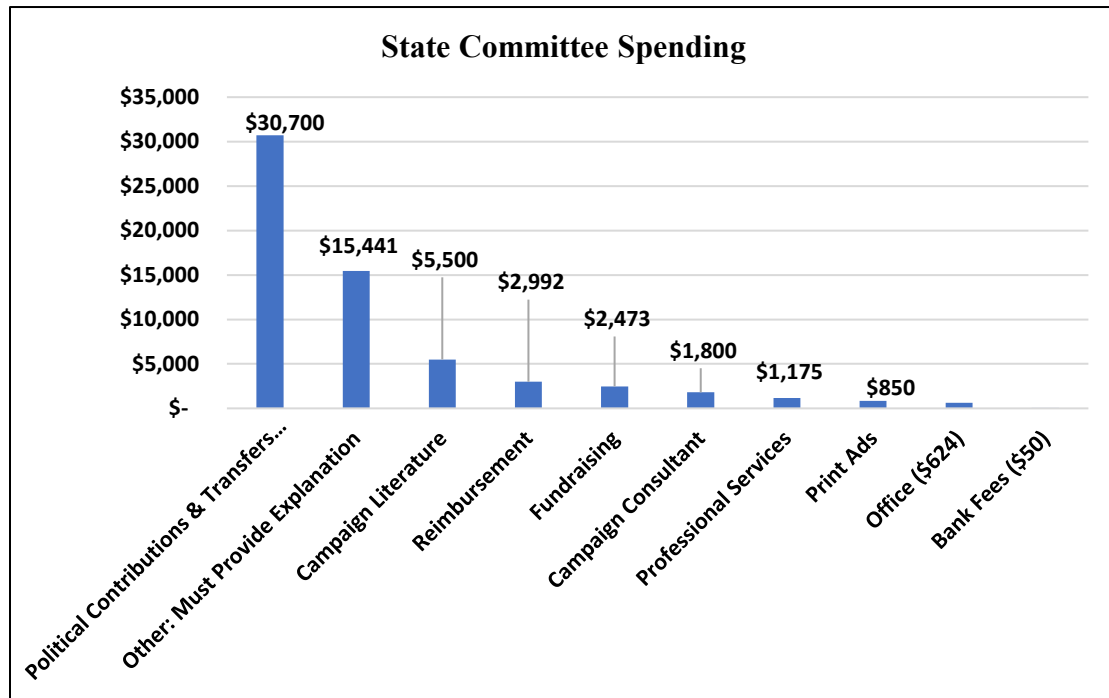
⁸ The Complaint incorrectly lists this contribution amount as \$300. Compl. at 4 (Sept. 2, 2022).

⁹ The Complaint incorrectly lists this contribution amount as \$150. *Id.* at 5.

¹⁰ The Complaint did not include this amount.

1 contributions, transfers out, “other: must provide explanation,”¹¹ campaign literature,
 2 reimbursement, fundraising, campaign consultant, professional services, print ads, office, and
 3 bank fees.

4 **FIGURE 2**
 5



6
 7 **A. The Complaint and Response**

8 The Complaint alleges that Garbarino and the Federal Committee violated 11 C.F.R.
 9 § 110.3(d) by accepting \$800 from the State Committee on March 1, 2020.¹² The Complaint
 10 also alleges that Respondents violated 11 C.F.R. § 110.3(d) as a result of the State Committee's
 11 payment of \$7,300 to CCC Enterprises for “campaign literature” and “campaign consultant,”
 12 \$2,472 to Land's End for “fundraising,” and \$850 to Schneps Media for “print ads.”¹³ The

¹¹ The category labeled “Other: Must Provide Explanation” consists of the following: civic event (\$75), civic groups (\$168), dinner event (\$100), donation (\$1,289.83), gifts (\$2,832.76), meals (\$8,571.57), Memorial Day wreaths (\$162.94), sponsorship (\$2,162.72), and travel (\$77.70).

¹² Compl. at 3, 6.

¹³ *Id.* at 2-4, 7.

1 Complaint argues that these payments were for the Federal Committee's campaign expenses and
2 thus in-kind contributions.¹⁴ In support, the Complaint points to the fact that Garbarino was not
3 running for state office in 2020 and that the Federal Committee used CCC Enterprises as a
4 campaign vendor during the same time period as the State Committee when neither had used its
5 services before.¹⁵ Next, the Complaint alleges that the State Committee's receipt of \$3,550 in
6 corporate and state political committee contributions after Garbarino became a federal candidate
7 violated 52 U.S.C. § 30125(e)(1)(A)-(B) and 11 C.F.R. §§ 300.61-.62.¹⁶ Finally, the Complaint
8 alleges that the State Committee's contributions totaling \$30,700, to various state and local
9 candidates and committees after Garbarino's federal candidacy violated 52 U.S.C.
10 § 30125(e)(1)(B) and 11 C.F.R. §§ 300.62.¹⁷

11 Respondents submitted an unsworn response admitting that the State Committee
12 contributed \$800 to the Federal Committee but argue that the amount is *de minimis* and should
13 be dismissed.¹⁸ As for the allegation that the State Committee paid for Garbarino's federal
14 campaign expenses, the Response generally asserts that the allegations do not satisfy the Act's

¹⁴ *Id.* at 3-4, 7. "Land's End" refers to a waterfront event venue located in Sayville, NY.

¹⁵ *Id.* at 4, 7; Friends of Andrew Garbarino, 2020 July Periodic Report (July 17, 2020), <https://publicreporting.elections.ny.gov/CandidateCommitteeDisclosure/CandidateCommitteeDisclosure> (showing payments from State Committee to "CCC Enterprises on May 11, 2020, June 19, 2020, August 6, 2020, August 28, 2020, and September 19, 2020); *FEC Disbursements*: Filtered Results, FEC.gov, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00729954&recipient_name=ccc&two_year_transaction_period=2020 (showing payments from Federal Committee to "CCC Enterprises" on May 12, 2020, August 6, 2020, September 28, 2020, October 11, 2020, and November 20, 2020).

¹⁶ Compl. at 4-5, 7-8.

¹⁷ *Id.* at 5, 8; *see also* Attach. 2 (compilation of expenditures of Friends of Andrew Garbarino reported to New York State Board of Elections) (showing "political contributions" and transfers out by the State Committee to the Nassau County Republican Committee, "SC GOP," Brookhampton Conservative Party, Islip Town Conservative Exec Committee, Nassau County Conservative Party, Republican Assembly Campaign Committee, Lalota for New York, Friends of Andrew Raia, Friends of Jarrett Gandolfo, Friends of Tom O'Mara, Friends of Tony Palumbo, and Boyle for Senate).

¹⁸ Resp. at 3 (Nov. 22, 2022) (citing MUR 7367 (Brindisi)).

1 reason to believe standard.¹⁹ With regard to some of the specific expenditures identified in the
2 Complaint, the Response describes the State Committee's expenditures for "fundraising" as an
3 event "without any solicitation component meant as a thank you to donors and those who had
4 been helpful" during the time Garbarino served in the New York State Assembly.²⁰ The
5 Response states that the State Committee's payments to CCC Enterprises "also encompassed
6 communications with . . . Garbarino's constituents about his legislative accomplishments" and
7 argues that Garbarino was permitted to "get[] his name on the ballot to retain his state seat in the
8 event he lost his federal primary."²¹ As for the payments to CCC Enterprises, the Response
9 argues that there is nothing improper with the State Committee's use of the same vendor as the
10 Federal Committee.²² Finally, the Response argues that the State Committee's revenue raising
11 — *i.e.*, the State Committee's receipt of contributions from corporations and state political
12 committees — is a matter of state and local law and therefore outside the Commission's
13 jurisdiction.²³

14 III. LEGAL ANALYSIS

15 The Act and Commission regulations prohibit candidates, individuals holding Federal
16 office, agents of a candidate or an individual holding Federal office, or an entity directly or
17 indirectly established, financed, maintained, or controlled ("EFMC") by or acting on behalf of
18 one or more candidates or individuals holding Federal office from "solicit[ing], receiv[ing],
19 direct[ing], transfer[ing], or spend[ing] funds in connection with an election for Federal office,

¹⁹ *Id.* at 2-3.

²⁰ *Id.* at 2.

²¹ *Id.*

²² *Id.*

²³ *Id.* at 3.

1 including funds for any Federal election activity, unless the funds are subject to the limitations,
 2 prohibitions, and reporting requirements of this Act”²⁴ and from “solicit[ing], receiv[ing],
 3 direct[ing], transfer[ing], or spend[ing] funds in connection with” a nonfederal election unless
 4 the funds are subject to the Act’s amount limitations and source prohibitions.²⁵ The Commission
 5 has determined that a state campaign committee of a federal candidate is, as a matter of law,
 6 EFMC’d by the federal candidate and acts on the candidate’s behalf.²⁶

7 Transfers of funds or assets from a candidate’s campaign account for a nonfederal
 8 election to his or her principal campaign committee for a federal election are also prohibited.²⁷

9 The prohibition on transferring funds applies broadly and includes payment by the state
 10 committee for services to the federal committee.²⁸ Accordingly, a candidate’s state committee’s
 11 funds must be kept separate from his or her federal committee’s funds.²⁹ The Act provides an
 12 exception to the soft money prohibition in certain circumstances where a federal candidate “is or
 13 was also a candidate for State or local office.”³⁰ Such a candidate may solicit, receive, or spend

²⁴ 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. § 300.61.

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

²⁶ See Factual and Legal Analysis (“F&LA”) at 8-9, MUR 7853 (Lance Harris, *et al.*) F&LA at 6, MUR 7337 (Debbie Lesko and Re-Elect Debbie Lesko for Senate); F&LA at 9, MUR 7246 (Buddy Carter for Congress, *et al.*); F&LA at 4, MUR 6985 (Zeldin for Senate, *et al.*) (citing Advisory Opinion (“AO”) 2009-26 at 5 (Coulson), AO 2007-01 at 3 (McCaskill), and F&LA at 9, MUR 6601 (Oelrich for Congress)).

²⁷ 11 C.F.R. § 110.3(d). Although not specifically referenced in the Complaint, 52 U.S.C. 30125(e)(1)(A) also applies to this situation. See F&LA at 116, MUR 5646 (Cohen for New Hampshire); Gen. Counsel’s Rpt. (“GCR”) at 1, 3, MUR 6340 (McDowell for Congress, *et al.*), & Certification (“Cert.”), MUR 6340 (McDowell for Congress).

²⁸ F&LA at 5, MUR 6267 (Paton For Senate, *et al.*) (candidate’s federal committee “effectively received prohibited transfer of funds in violation of [52 U.S.C. § 30125(e)] and 11 C.F.R. § 110.3(d) when the candidate’s state committee paid for expenses that were incurred in connection with his federal election.”); F&LA at 12-16, MUR 5646 (Cohen for New Hampshire) (candidate’s federal committee received prohibited transfer of funds when he used state campaign funds to pay for federal campaign expenses); Conciliation Agreement at IV.11, V.1-2, MUR 4974 (Friends of Tiberi, *et al.*) (candidate’s federal and state committees violated 11 C.F.R. § 110.3(d) when his state committee paid for expenses incurred on behalf of his federal committee).

²⁹ 11 C.F.R. § 110.3(d).

³⁰ 52 U.S.C. § 30125(e)(2).

1 nonfederal funds as long as that solicitation, receipt, or spending: (1) is “solely in connection
2 with such election for State or local office,” (2) “refers only to that State or local candidate” or
3 to other candidates for that same state or local office, and (3) is permitted under state law.³¹
4 Thus, a simultaneous state candidate and federal candidate may spend otherwise impermissible
5 funds in connection with their own state election.³² The provisions at 52 U.S.C. § 30125(e) and
6 11 C.F.R. § 110.3(d) are designed to prevent the use of funds that are outside the limitations and
7 prohibitions of the Act in federal elections, and to ensure that all funds used in federal elections
8 are reported.³³

9 The Act prohibits corporations from making contributions to federal candidates or their
10 committees and corporate officers and directors from consenting to such contributions.³⁴ The
11 Act also prohibits federal candidates or their committees from knowingly accepting corporate
12 contributions.³⁵

13 **A. The Commission Should Find Reason to Believe that Respondents Violated**
14 **52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d) in Connection with the**
15 **State Committee’s \$800 Transfer to the Federal Committee**

16 Here, Respondents concede, and both committees’ disclosure reports confirm, that the
17 Federal Committee accepted an \$800 transfer from the State Committee.³⁶ Accordingly, we

³¹ *See id.*; 11 C.F.R. § 300.63.

³² *See* AO 2005-02 at 2, 4 (Corzine); AO 2003-32 at 5 (Tenenbaum).

³³ F&LA at 4, MUR 7109 (Portantino).

³⁴ 52 U.S.C. § 30118(a).

³⁵ *Id.*

³⁶ Resp. at 3; *see also* Friends of Andrew Garbarino, 2020 July Periodic Report (July 17, 2020), <https://publicreporting.elections.ny.gov/CandidateCommitteeDisclosure/CandidateCommitteeDisclosure> (search within “Candidate/Committee Disclosures” for “Andrew Garbarino”); Garbarino for Congress, 2020 April Quarterly Report at 34 (Apr. 15, 2020), <https://docquery.fec.gov/pdf/379/202004159216948379/202004159216948379.pdf> (showing Federal Committee’s receipt).

1 recommend that the Commission find reason to believe that Respondents violated 52 U.S.C.
 2 § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d) in connection with this contribution.³⁷

3 **B. The Commission Should Find Reason to Believe that Garbarino and the**
 4 **State Committee Violated 52 U.S.C. § 30125(e)(1)(B) by Receiving and**
 5 **Spending Nonfederal Funds in Connection with an Election to Nonfederal**
 6 **Office**

7 As discussed *supra*, as a matter of law, the State Committee was an entity controlled or
 8 maintained by a federal candidate; therefore, Garbarino, a federal candidate, EFMC'd the State
 9 Committee, and the State Committee was acting on behalf of Garbarino. Because Garbarino
 10 EFMC'd the State Committee, any funds the State Committee solicited, received, directed,
 11 transferred, or spent in connection with a federal election or state election after Garbarino
 12 became a federal candidate were required to be federally permissible.³⁸ Moreover, the exception
 13 under the Act allowing a simultaneous federal and state candidate to spend nonfederal funds
 14 "solely in connection with such election for State or local office," does not apply here since it
 15 does not appear that Garbarino was a state candidate in 2020.³⁹ Although the Response claims
 16 that Garbarino could have filed to be on the ballot for the State Assembly seat, there is no
 17 evidence that he participated in the primary election for that office or campaigned for any state or

³⁷ The State Committee's \$800 transfer involves a low amount and would ordinarily warrant dismissal pursuant to *Heckler v. Chaney*, had it been the State Committee's only violation. *See, e.g.*, GCR at 1, 3, & Cert., MUR 6340 (McDowell for Congress, *et al.*) (dismissing with reminder letter in matter involving \$1,000 transfer); First GCR at 18 & Cert. ¶ 4, MUR 5446 (Citizens for Welch, *et al.*) (finding reason to believe but taking no further action and sending admonishment letter in matter involving \$2,000 transfer); First GCR at 10-11 & Cert. ¶¶ 1-2, MUR 5406 (Friends of Dan Hynes, *et al.*) (reason to believe but taking no further action and sending admonishment letter with instruction in matter involving \$1,000 transfer); First GCR at 11 & Cert. at ¶ 3, MUR 5304 (Friends of Dennis Cardoza, *et al.*) (reason to believe but taking no further action and sending admonishment letter in matter involving \$1,000 transfer).

³⁸ F&LA at 4, MUR 6985 (Zeldin for Senate, *et al.*).

³⁹ *See* 52 U.S.C. § 30125(e)(2); 11 C.F.R. § 300.63; F&LA at 4 n.13, MUR 6985 (Zeldin for Senate, *et al.*) (finding that a state officeholder who was not seeking a state office could not take advantage of the exception).

1 local office at the time of the receipts and expenditures at issue. Thus, he cannot take advantage
2 of this state candidate exception.

3 1. The State Committee's Receipt of Nonfederal Funds

4 The Response argues that the State Committee's fundraising is "subject to state and local
5 laws, not the [Act]."⁴⁰ That argument is incorrect. The Act states that an entity EFMC'd by a
6 federal candidate or federal officeholder is prohibited from "receiv[ing] . . . funds in connection
7 with any election other than an election to Federal office" unless the funds are subject to the
8 limitations and source prohibitions of the Act.⁴¹ The Commission has enforced this prohibition
9 against entities EFMC'd by federal candidates, including against a state committee of a federal
10 candidate/officeholder.⁴²

11 Here, the State Committee was EFMC'd by Garbarino and its disclosure reports show
12 that it accepted \$2,550 in contributions from corporations, a prohibited source, after Garbarino
13 filed his statement of candidacy.⁴³ Accordingly, there is reason to believe that Garbarino and the
14 State Committee violated 52 U.S.C. § 30125(e)(1)(B) by receiving funds in connection with an

⁴⁰ Resp. at 3.

⁴¹ 52 U.S.C. § 30125(e)(1)(B).

⁴² See F&LA at 5, MUR 6985 (Zeldin for Senate, *et al.*) (reason to believe where state campaign committee of federal candidate/officeholder accepted corporate contributions after individual became a federal candidate and was no longer a state candidate); see also F&LA at 7, MUR 6957 (Isadore Hall III, *et al.*) (reason to believe where ballot measure committee EFMC'd by federal candidate accepted corporate contributions after individual became a federal candidate). Cf. F&LA at 12, MUR 6820 (Carter) (Commission dismissed based on prosecutorial discretion allegation that candidate's state committee accepted \$3,250 in corporate contributions after he became a federal candidate; the federal candidate was a concurrent state candidate at the time, which would have necessitated investigating whether contributions were in connection with his state election.). The "state candidate" exception to 52 U.S.C. § 30125(e)(1)(B) that permits concurrent state and federal candidates to receive and spend nonfederal funds "solely in connection with *such* election for State or local office," does not apply by its terms to a non-state candidate. See 52 U.S.C. § 30125(e)(2); 11 C.F.R. § 300.63 (emphasis added).

⁴³ See Attach. 1 (compilation of contributions received by Friends of Andrew Garbarino reported to New York State Board of Elections). The Complaint also includes a \$1,000 contribution from LawPAC in its total amount of \$3,550. See Compl. at 4.

1 election other than an election for federal office that were not subject to the Act's source
2 prohibitions.

3 2. The State Committee's Spending of Nonfederal Funds

4 Notwithstanding the prohibitions of 52 U.S.C. § 30125(e), the Commission has allowed a
5 state officeholder and federal candidate to donate federally permissible funds in a state account
6 to other state and local political committees if the state committee uses a "reasonable accounting
7 method" to separate permissible from impermissible funds (*i.e.*, those raised consistent with state
8 law but outside the Act's contribution limitations and source prohibitions), and it makes the
9 contributions with the permissible funds.⁴⁴ Moreover, the restrictions of 52 U.S.C. § 30125(e)
10 related to the spending of nonfederal funds only apply to activity that is in connection with any
11 election. New York state law permits campaign funds to be used to defray expenses related to
12 "the holding of public office or party position."⁴⁵ Such state officeholder expenses and
13 administrative costs of maintaining a state committee would not fall under the 52 U.S.C.
14 § 30125(e) restrictions if they are unrelated to any election.⁴⁶ Thus, if the State Committee used
15 a reasonable accounting method to identify federally permissible funds, it would be permissible
16 for the State Committee to use those funds for nonfederal campaign contributions made after
17 Garbarino became a federal candidate. The State Committee could also use nonfederal funds in
18 its account for disbursements related to Garbarino's official duties as a sitting member of the
19 New York State Assembly, since those disbursements are not related to any election.⁴⁷

⁴⁴ AO 2007-26 at 3-5 (Schock); AO 2005-38 at 4 (Casey).

⁴⁵ MCKINNEY'S CONSOL. LAWS OF N.Y. ANN. Chapter 17 § 14-130.

⁴⁶ F&LA at 10, MUR 7246 (Buddy Carter for Congress, *et al.*) (citing AO 2016-25 (Mike Pence for Indiana), AO 2009-26 (State Representative Coulson), AO 2004-14 (Davis), and AO 2003-20 (Reyes)).

⁴⁷ *Id.* (citing AO 2009-26 at 5 (concluding that soft money rules do not restrict state committee's disbursements for state legislative activity)).

1 Here, the State Committee's disbursements to state and local candidates and committees
2 after Garbarino became a federal candidate appear to have violated the Act. The State
3 Committee reported giving \$19,300 from January 12, 2020, through September 28, 2020, to state
4 and local candidates and committees as "political contribution[s]." ⁴⁸ Therefore, these
5 contributions do not appear to be for the purpose of defraying expenses related to Garbarino's
6 holding of public office or party position. Similarly, there is nothing in the record that indicates
7 that the State Committee's three payments to the Republican Assembly Campaign Committee
8 totaling \$10,250 and two payments to the "SC GOP" totaling \$1,500 (reported as "transfers out")
9 were related to Garbarino's holding of public office or party position. ⁴⁹ Instead, the \$31,250
10 combined total that the State Committee reported as "political contributions" and "transfers out"
11 appears to qualify as being transferred, spent, or disbursed in connection with nonfederal
12 elections. ⁵⁰

13 The State Committee received a total of \$137,276 from July 2017 (the beginning of New
14 York's 2018 January Periodic reporting period) to November 3, 2020 (Election Day). ⁵¹ Of that
15 total, \$32,426 (23.68%) came from individuals, \$5,075 (3.7%) came from partnerships, \$2,775
16 (2%) were unitemized, \$25,175 (18.38%) came from corporations, \$4,250 (3.1%) came from
17 "other," \$53,925 (39.38%) came from PACs, \$1,075 (.07%) came from political committees, and

⁴⁸ See Attach. 2.

⁴⁹ See About Us, New York State Republican Assembly Campaign Committee (last visited Mar. 17, 2023), <http://www.nyracc.com/about> ("[NYSRACC] is a political committee devoted to increasing the Republican delegation in the New York State Assembly"). We believe "SC GOP" stands for "Suffolk County GOP."

⁵⁰ See F&LA at 4, MUR 6985 (Zeldin for Senate, *et al.*) (donations by state committee of a federal candidate and New York state senator to state and local candidates and parties constitutes "transferring, spending, or disbursing funds in connection with a nonfederal election"). We calculated the amount in violation to include the State Committee's \$300 contribution to the East End Republican Club and \$250 contribution to the Suffolk County Young Republicans. This accounts for the difference between the \$31,250 included in this report and the Complaint's alleged amount in violation of \$30,700.

⁵¹ Attach. 1.

1 \$12,225 (8.9%) came from LLCs.⁵² While theoretically possible, given the makeup of
2 contributions received over the previous two and half years, it appears unlikely that the \$31,250
3 given to state and local candidates and committees was comprised of only federally permissible
4 funds. The State Committee had not received an itemized individual contribution since July 1,
5 2019.⁵³ Instead, the overwhelming majority of the State Committee's receipts since July 1, 2019
6 were from state PACs, state political committees, LLCs, and corporations.⁵⁴ And following
7 Garbarino's filing a Statement of Candidacy on December 6, 2019, the majority of the State
8 Committee's receipts were contributions from corporations.⁵⁵

9 The Response does not address this alleged violation. As a result, we do not have
10 information that the State Committee used a "reasonable accounting method" and used only
11 federally permissible funds to make the contributions at issue. Moreover, the fact that the State
12 Committee admittedly transferred \$800 in funds to the Federal Committee in violation of
13 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d) suggests that the State Committee did not
14 have sufficient safeguards to ensure only federally permissible funds were contributed to state
15 and local candidates following Garbarino's federal candidacy.

16 Accordingly, we recommend that the Commission find reason to believe that Garbarino
17 and the State Committee violated 52 U.S.C. § 30125(e)(1)(B) by receiving and spending funds in
18 connection with a nonfederal election from sources prohibited by the Act.⁵⁶

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ See F&LA at 5-6, MURs 7106 & 7108 (Citizens for Maria Chappelle-Nadal, *et al.*) (reason to believe where federal candidate's state committee contributed to state and local candidates without demonstrating it had sufficient federal funds using a reasonable accounting method); F&LA at 5, MUR 6985 (Zeldin for Senate, *et al.*)

1 **C. The Commission Should Find Reason to Believe that Garbarino and the**
 2 **State Committee Violated 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R.**
 3 **§ 110.3(d) by Spending Nonfederal Funds in Connection with an Election to**
 4 **Federal Office**

5 Because the State Committee accepted contributions from corporations and none of the
 6 State Committee's funds were subject to the Act's reporting provisions as required by 52 U.S.C.
 7 § 30125(e)(1)(A), if the State Committee paid for Garbarino's federal campaign expenses,
 8 Garbarino and the State Committee would have spent nonfederal funds in connection with a
 9 federal election in violation of 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d).⁵⁷

10 Here, the Complaint argues that the State Committee's expenditures for "campaign
 11 consultant," "campaign literature," "fundraising," and "print ads" (totaling \$10,622.50) must
 12 have been in support of Garbarino's federal candidacy because Garbarino was not
 13 simultaneously a candidate for state office.⁵⁸ The Complaint also claims that the State
 14 Committee's expenditures to CCC Enterprises must have been in support of Garbarino's federal
 15 candidacy because it was simultaneously providing services to the Federal Committee.⁵⁹ For its
 16 part, the Response asserts that the Complaint's allegations do not meet the Commission's
 17 "reason to believe standard."⁶⁰

(reason to believe where there was no indication that federal candidate's state committee donated to state and local parties using a reasonable accounting method to ensure such donations consisted of federally permissible funds).

⁵⁷ See F&LA at 4, MUR 7109 (Portantino); F&LA at 11, MUR 6447 (Steele for Maryland) (reason to believe where candidate's state campaign committee paid bills of candidate's federal committee); MUR 6267 (Paton) (reason to believe where candidate's state campaign committee paid candidate's federal committee's polling and survey costs); F&LA at 3, MUR 6219 (Kuhl for Congress) (reason to believe state campaign committee of New York State Senator violated 52 U.S.C. § 30125(e)(1)(A) by paying for his federal campaign expenses); MUR 5480 (Levetan) (reason to believe where a state lawmaker and her state and federal used funds from the state committee's nonfederal account to pay for polling expenditures that directly benefited her federal campaign); MUR 5426 (Schultz) (reason to believe where a state senator directed that funds and assets from his state committee be used to pay for expenses related to his federal election campaign)).

⁵⁸ Compl. at 1-4, 7.

⁵⁹ *Id.* at 3-4, 7.

⁶⁰ See Resp. at 1-2.

1 A “reason to believe” finding that a person has committed a violation of the Act is a
2 “threshold determination”⁶¹ that an investigation *may* demonstrate liability.⁶² It is the lowest
3 evidentiary standard in the Act’s framework for administrative enforcement; lower than
4 “probable cause to believe” and lower than “reasonable cause to believe,” which, prior to 1980,
5 triggered the Act’s mandatory efforts at conciliation.⁶³ As for the amount of evidence required,
6 one federal district court recently stated that a “credible allegation” is all that is needed “given
7 what a low bar the reason-to-believe standard represents.”⁶⁴ Other courts have stated that there
8 must be some minimal amount of evidence of a violation.⁶⁵ Under both views, which do not

⁶¹ See, e.g., *CREW v. FEC*, 993 F.3d 880, 892 (D.C. Cir. 2021); *FEC v. Rose*, 806 F.2d 1081, 1091 (D.C. Cir. 1986).

⁶² See Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545 (Mar. 16, 2007) (“‘reason to believe’ findings indicate only that the Commission found sufficient legal justification to open an investigation to determine whether a violation of the Act has occurred.”)

⁶³ See ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW* 170 (2012) (“[w]here the document has used one term in one place, and a materially different term in another, the presumption is that the different term denotes a different idea”). “Reason to believe” was initially included as part of the Federal Election Campaign Act Amendments of 1974. Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, § 314, 88 Stat. 1263, 1284 (1974). The “reasonable cause to believe” and “probable cause to believe” provisions were added by the Federal Election Campaign Act Amendments of 1976, which significantly restructured the Act’s enforcement framework to require reason to believe to initiate an investigation, reasonable cause to believe to trigger a mandatory period to attempt conciliation following an investigation, and probable cause to believe in order to institute a civil action if conciliation failed. Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, § 313, 90 Stat. 475, 483-84 (1976). The “reasonable cause to believe” provision was later removed as part of the Federal Election Campaign Act Amendments of 1979, which also changed the trigger for mandatory conciliation to probable cause to believe. Federal Election Campaign Act Amendments of 1979, Pub. L. No. 96-187, § 309, 93 Stat. 1339, 1359 (1980).

⁶⁴ *Campaign Legal Center v. FEC*, No. 19-2336, 2022 WL 17496220 at *8 (D.D.C. Dec. 8, 2022).

⁶⁵ *Nat’l Right to Work Comm. v. FEC*, No. 86-0006 (D.D.C. Aug. 21, 1986) (“While not now indicating the precise dividing line, this Court recognizes that there is a vast middle ground between filing a complaint totally devoid of supporting evidence and hiring detectives to violate the Act in an effort to discover violations of the Act by others [the alleged activity].”); *Orloski v. FEC*, No. 83-3513 (D.D.C. Dec. 6, 1984) (“[T]he existence of a facially valid complaint is a powerful factor in favor of a decision to investigate, but it is not in itself dispositive.”), *aff’d*, 795 F.2d 156 (D.C. Cir. 1986); *In re FECA Litigation*, 474 F. Supp. 1044, 1047 (D.D.C. 1979) (“[E]ven when the complaints state a valid charge, they do so only in the most conclusory fashion. [The Plaintiff] offers not a scintilla of evidence to support his assertion.”); *Hampton v. FEC*, No. 76-1392 (D.D.C. April 15, 1977) (Commission decision to approve no reason to believe recommendation not arbitrary and capricious because factual allegations were “tenuous”), *aff’d*, 580 F.2d 701 (D.C. Cir. 1978) (unpublished table decision).

1 necessarily conflict, proof of a violation is not necessary.⁶⁶ The Commission has stated that
2 reason to believe is appropriate when a complaint “credibly alleges that a significant violation
3 may have occurred, but further investigation is required to determine whether a violation in fact
4 occurred and, if so, its exact scope.”⁶⁷

5 The question of whether there is reason to believe that the State Committee’s
6 expenditures for “campaign consultant,” “campaign literature,” “fundraising,” and “print ads”
7 may have been for Garbarino’s federal candidacy is a close call. On the one hand, previous
8 matters where the Commission found reason to believe that a federal candidate’s state campaign
9 committee paid for that candidate’s federal campaign expenses, involved a significantly stronger
10 record at the reason to believe stage with respect to the nature of the payments at issue. For
11 example, when the Commission found reason to believe in complaint-generated matters MURs
12 5426 (Schultz) and 6267 (Paton), the record in those matters included respondents’ admissions
13 that the state committee paid for the candidate’s federal campaign expenses.⁶⁸ In other matters,

⁶⁶ See *DSCC v. FEC*, 745 F. Supp. 742, 746 (D.D.C. 1990) (quoting Commissioner Josefiak that “complaints certainly do not have to *prove* violations occurred, rendering investigation unnecessary”); *FEC v. Franklin*, 718 F. Supp. 1272, 1278 (E.D. Va. 1989) (“While the complaint does not present a complete factual and legal account of a violation of the [Act] by the unknown respondent, such an account is not required.”), *aff’d in part, vacated in part*, 902 F.2d 3 (4th Cir. 1989); *Spannaus v. FEC*, 641 F. Supp. 1520, 1525-29 (S.D.N.Y. 1986) (noting Commission opened investigation because facts indicated there “might” have been a violation, and analogizing such determination to the Federal Trade Commission’s “threshold determination[s] that further inquiry is warranted”), *aff’d*, 816 F.2d 670 (2d Cir. 1987) (unpublished table decision).

⁶⁷ See Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545 (Mar. 16, 2007); see also Federal Election Commission Annual Report 2004 at 43 (“The statutory phrase ‘reason to believe’ is misleading and does a disservice to both the Commission and the respondent. It implies that the Commission has evaluated the evidence and concluded that the respondent has violated the Act. In fact, however, a ‘reason to believe’ finding simply means that, after evaluating the complaint, the respondents’ responses to the complaint (if an externally generated complaint), and information available on the public record, the Commission believes a violation may have occurred. However, the Commission has not yet established that a violation has, in fact, occurred. In order to evaluate the validity of the alleged facts, the Commission needs to investigate, i.e., to seek information, and responses to specific inquiries, from those involved in the alleged activities. It would therefore be helpful to substitute words that sound less accusatory and that more accurately reflect what, in fact, the Commission is doing at this early phase of enforcement.”).

⁶⁸ See F&LA at 1, MUR 6267 (Jonathan Paton, *et al.*); F&LA at 2, 4, MUR 5426 (Dale Schultz, *et al.*).

1 the evidence was obtained as a result of an audit (MUR 6219 (Kuhl for Congress))
2 (MUR 6447 (Steele for
3 Maryland, *et al.*)).⁶⁹

4 Here, because the Federal Committee's reported cash-on-hand at the time exceeded
5 \$300,000, it does not appear that the Federal Committee needed subsidization by the State
6 Committee.⁷⁰ Further, the Response attempts to clarify some of the State Committee's purpose
7 descriptions for the expenditures at issue, arguing that some of the descriptions are
8 "misleading."⁷¹ The Response explains that the expenditure for "fundraising" was for an event
9 "without any solicitation component" and the expenditure for "[campaign] literature and
10 consultant also encompassed communications with . . . Garbarino's constituents about his [state]
11 legislative accomplishments."⁷² It also argues that Garbarino could make the expenditures at
12 issue to "retain his state seat in the event that he lost his federal primary."⁷³ Finally, the State
13 Committee had previously made payments to Land's End for "fundraising" in 2018 and 2019,
14 which could suggest that the 2020 payments were related to Garbarino's state office.⁷⁴

15 On the other hand, MURs 5426, 6219, 6267, and 6447 do not establish an evidentiary
16 floor by which no other set of facts could support reason to believe unless accompanied by an

⁶⁹ See F&LA at 1, MUR 6219 (Kuhl for Congress); First GCR at 1-2, MUR 6447 (Steele for Maryland, *et al.*).

⁷⁰ See Garbarino for Congress, 2020 April Quarterly Report at 2 (Apr. 15, 2020), <https://docquery.fec.gov/pdf/379/202004159216948379/202004159216948379.pdf> (disclosing ending cash on hand of \$321,537.64).

⁷¹ Resp. at 2.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ See Attach. 2; First GCR at 5, MUR 5416 (Wayne Christian, *et al.*) (fact that candidate's state committee had paid vendors before and after his federal candidacy suggested that the expenditures "were all related to his state office, which he continued to hold throughout th[e] time period") & Cert. (Nov. 8, 2004) (finding no reason to believe).

1 admission or the results of Commission audit Unlike
2 MUR 5426 (Schultz), where the Commission credited the candidate's sworn affidavit in which
3 he explained how certain of the state committee's payments (for polling data/voter lists and
4 computer equipment) were not used by his federal committee, there is no basis from which we
5 can conclude that, particularly in light of the State Committee's contemporaneous descriptions of
6 purpose, the payments were not in connection with Garbarino's federal candidacy.⁷⁵ The
7 unsworn Response reaches legal conclusions about the nature of the "fundraising" event (stating
8 that there was no "solicitation component") without providing additional details.⁷⁶ The
9 Response is also equivocal in its explanation regarding the State Committee's payment for
10 "campaign literature" and "campaign consultant," noting that the word "campaign" in those
11 descriptions "*also encompassed*" communications with constituents about his legislative
12 accomplishments and does not indicate that these expenditures were actually limited to only
13 those types of communications.⁷⁷ Finally, the claim that Garbarino could make the expenditures
14 at issue to retain his state seat also appears inaccurate, given that dates for filing designating
15 petitions to run for New York State Assembly were March 17-20 and the complained-of
16 expenditures began in April.⁷⁸

⁷⁵ F&LA at 3, 5, MUR 5426 (Dale Schultz, *et al.*).

⁷⁶ *Id.* If "unwarranted legal conclusions from asserted facts . . . will not be accepted as true" when made by complainants, they equally should not be taken as true when made by respondents. Statement of Reasons, Comm'rs Mason, Smith, Sandstrom & Thomas. MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee, Inc.).

⁷⁷ Resp. at 2 (emphasis added). The Response does not address the Complaint's allegations with respect to payment for "print ads."

⁷⁸ *Id.*; 2020 Political Calendar at 2, New York Board of Elections, <https://www.elections.ny.gov/NYSBOE/law/2020PoliticalCalendar0608.pdf>. New York state law requires that "the designation of a candidate for party nomination at a primary election . . . shall be by designating petition. MCKINNEY'S CONSOL. LAWS OF N.Y. ANN. Chapter 17 § 6-118. It also requires primary elections where "more candidates are designated for the nomination of a party for an office to be filled by the voters of the entire state than there are vacancies." *Id.* § 6-160. The lack of primary results for the Republican primary election for New York

1 We believe the record in this matter, on balance, supports finding reason to believe.
 2 Given the contemporaneous campaign-related descriptions of the State Committee's complained-
 3 of expenses, the fact that Garbarino did *not* simultaneously run for state office, the State
 4 Committee's other soft money violations described above, and the Response's incomplete
 5 explanations regarding the complained-of expenditures, the record sufficiently indicates at this
 6 preliminary stage that the State Committee's expenditures for "campaign consultant," "campaign
 7 literature," "fundraising," and "print ads" may have been in connection with Garbarino's federal
 8 candidacy.⁷⁹ Accordingly, we recommend that the Commission find reason to believe that
 9 Garbarino and, the State Committee violated 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R.
 10 § 110.3(d) by spending nonfederal funds in connection with a federal election.⁸⁰

11 **D. The Commission Should Find Reason to Believe that the Federal Committee**
 12 **Violated 52 U.S.C. § 30125(e)(1)(A) and 52 U.S.C. § 30104(b) By Receiving,**
 13 **and Failing to Report, In-Kind Contributions from the State Committee in**
 14 **Connection with an Election to Federal Office**

15 If the State Committee's expenditures for "campaign consultant," "campaign literature,"
 16 "fundraising," and "print ads" were in connection with Garbarino's federal candidacy, the

State Assembly District 7 suggests that the Republican candidate, Jarett Gandolfo, was unopposed. *See* Certified Results from the June 23, 2020 Primary Election, New York State Board of Elections, <https://www.elections.ny.gov/NYSBOE/elections/2020/Primary/CertifiedJune232020StatePrimaryResults.pdf> (not including Republican primary results for State Assembly District 7).

⁷⁹ *See* Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545 (Mar. 16, 2007) ("Commission 'reason to believe' findings have caused confusion in the past because they have been viewed as definitive determinations that a respondent violated the Act. In fact, 'reason to believe' findings indicate only that the Commission found sufficient legal justification to open an investigation to determine whether a violation of the Act has occurred.").

⁸⁰ The State Committee has terminated its registration with the New York State Board of Elections. *Supra* p. 3. New York requires political committees to "keep detailed, bound accounts of all receipts, transfers, loans, liabilities, contributions and expenditures made by the committee or any of its officers, members or agents, acting under its authority or on its behalf, for a period of five years." New York State Board of Elections Campaign Finance Handbook 2023 at 65, <https://www.elections.ny.gov/NYSBOE/download/finance/CampaignFinanceHandbook.pdf>. Given New York's record retention requirements and the fact that the Commission has previously pursued enforcement action against a terminated New York state committee for violating the Act's soft money ban, we believe reason to believe findings against the State Committee are appropriate in this matter. *See* F&LA at 3-5, MUR 6985 (Zeldin for Senate, *et al.*).

1 Federal Committee would have received a prohibited in-kind contribution from the State
2 Committee.⁸¹ However, the Federal Committee did not report receiving contributions from the
3 State Committee other than the \$800 transfer discussed above.

4 Because we recommend that the Commission find reason to believe that the complained-
5 of State Committee expenditures were made in connection with Garbarino's federal candidacy,
6 we likewise recommend that the Commission find reason to believe that the Federal Committee
7 received an in-kind contribution from the State Committee in violation of 52 U.S.C.
8 § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d). Further, because the Federal Committee did not
9 report receiving contributions from the State Committee other than the \$800 contribution we also
10 recommend that the Commission find reason to believe that the Federal Committee violated
11 52 U.S.C. § 30104(b).

12 **IV. INVESTIGATION**

13 The record establishes reason to believe Respondents violated the Act's soft money ban
14 as a result of the State Committee's \$800 transfer to the Federal Committee. It also establishes
15 reason to believe Garbarino and the State Committee violated the Act's soft money ban as a
16 result of the State Committee's receipt and spending of nonfederal funds in connection with an
17 election to nonfederal office. However, additional information is needed to confirm or disprove
18 the elements of a violation of 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d) with respect
19 to the State Committee's spending of nonfederal funds in connection with a federal election,
20 specifically with regard to the reported payments for "campaign consultant," "campaign
21 literature," "fundraising," and "print ads." The proposed investigation would be focused on

⁸¹ See F&LA at 11, MUR 6447 (Steele for Maryland) ("[I]f State Committee funds were used to pay federal campaign expenses, the Federal Committee would have received prohibited in-kind contributions from the State Committee in violation of [52 U.S.C. § 30125(e)(1)(A)] and 11 C.F.R. § 110.3(d)").

1 obtaining information regarding those payments to discover whether they were, in fact, made in
2 connection with Garbarino's federal candidacy. Such information would include
3 communications concerning the specific campaign literature and print ads at issue, as well as
4 copies of, and receipts for, the campaign literature and print ads. We would also request any
5 materials distributed as part of the specific fundraising events identified in the Complaint that
6 were held at Land's End. Finally, we would request answers from CCC Enterprises as to the
7 nature of the services provided to the State Committee.

8 We request that the Commission authorize the use of compulsory process, including the
9 issuance of appropriate interrogatories, document subpoenas, and deposition subpoenas, as
10 necessary. In the interest of expediting the investigation in this matter, we also request that the
11 Commission approve the attached subpoenas as an initial step. The subpoenas are directed to
12 Garbarino and CCC Enterprises.

13 **V. RECOMMENDATIONS**

- 14 1. Find reason to believe that Andrew Garbarino, Garbarino for Congress and Lisa
15 Lisker in her official capacity as treasurer, and Friends of Andrew Garbarino violated
16 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d) in connection with an \$800
17 transfer from Friends of Andrew Garbarino to Garbarino for Congress;
18
- 19 2. Find reason to believe that Andrew Garbarino and Friends of Andrew Garbarino
20 violated 52 U.S.C. § 30125(e)(1)(B) by receiving and spending nonfederal funds in
21 connection with an election to nonfederal office;
22
- 23 3. Find reason to believe that Andrew Garbarino and Friends of Andrew Garbarino
24 violated 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d) by spending nonfederal
25 funds in connection with a federal election;
26
- 27 4. Find reason to believe that Garbarino for Congress and Lisa Lisker in her official
28 capacity as treasurer violated 52 U.S.C. § 30125(e)(1)(A), 30104(b) and 11 C.F.R.
29 § 110.3(d) by receiving, and failing to report, in-kind contributions from Friends of
30 Andrew Garbarino in connection with an election to federal office;
31
- 32 5. Authorize the use of compulsory process;
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- 6. Approve the attached Factual and Legal Analysis;
- 7. Approve the attached subpoenas; and
- 8. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

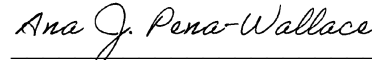
Charles Kitcher
Associate General Counsel for
Enforcement

May 2, 2023

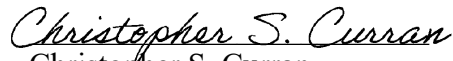
Date



Claudio J. Pavia
Deputy Associate General Counsel for
Enforcement



Ana J. Peña-Wallace
Assistant General Counsel



Christopher S. Curran
Attorney

Attachments:

- 1- State Committee's Contributions Received
- 2- State Committee's Expenditures
- 3- Factual and Legal Analysis

ATTACHMENT 1:
State Committee's Contributions Received (July 15, 2017 – Nov. 5, 2020)¹

Date	Contributor	EntityName	Amount
7/15/2017		Double R Contracting Inc	\$ 300.00
7/15/2017		N & P Engineers & Land Sureyors Pllc	\$ 250.00
8/4/2017	Political Action Comm. (PAC)	Pfizer Pac	\$ 250.00
8/23/2017	Individual		\$ 200.00
9/19/2017		Altria Client Services Llc	\$ 250.00
10/12/2017	Individual		\$ 100.00
10/25/2017	Political Action Comm. (PAC)	New York State Laborers Pac State Fund	\$ 1,000.00
11/16/2017		Manhattan Beer Distributors Llc	\$ 1,000.00
1/10/2018	Partnership, including LLPs	Harter Secrest & Emery Llp	\$ 500.00
2/24/2018	Political Action Comm. (PAC)	Committee For Medical Eye Care	\$ 500.00
2/24/2018	Political Action Comm. (PAC)	Oil Heat Institute Of Li Inc Pac	\$ 250.00
2/24/2018	Political Action Comm. (PAC)	Superior Officers Assoc Of Police Dept Suf Cty Inc	\$ 250.00
2/27/2018	Political Action Comm. (PAC)	Dea Cope	\$ 250.00
2/27/2018	Political Action Comm. (PAC)	New York Insurance Assoc Inc Pac	\$ 250.00
2/27/2018	Political Action Comm. (PAC)	Rsa Pac	\$ 500.00
3/2/2018	Political Action Comm. (PAC)	Association Of Municipal Employees Pac	\$ 500.00
3/2/2018	Political Action Comm. (PAC)	Mta Pba Pac Fund	\$ 250.00
3/9/2018	Political Action Comm. (PAC)	Rpac Of New York State	\$ 300.00
3/9/2018	Political Action Comm. (PAC)	Sc Detectives Assoc Inc Pac Account	\$ 250.00
3/9/2018	Political Action Comm. (PAC)	The Life Insurance Council Of New York Pac	\$ 250.00
3/15/2018	Political Action Comm. (PAC)	Ny Build Pac	\$ 250.00
3/15/2018	Political Action Comm. (PAC)	Suffolk County Pba Pac	\$ 250.00
3/15/2018	Political Action Comm. (PAC)	Tuition Assistance Program Pac	\$ 250.00
3/21/2018	Political Action Comm. (PAC)	Vote/Cope Comm On Political Education Of Nysut	\$ 250.00
3/23/2018	Partnership, including LLPs	Harter Secrest & Emery Llp	\$ 1,250.00
3/23/2018	Individual		\$ 250.00
3/23/2018	Individual		\$ 250.00
3/23/2018	Individual		\$ 250.00
3/23/2018	Individual		\$ 250.00
3/23/2018		Anheuser-Busch Companies Llc	\$ 1,000.00
3/23/2018	Political Action Comm. (PAC)	Detective Assoc Inc Police Dept Cty Of Nassau Pac	\$ 250.00
3/23/2018	Political Action Comm. (PAC)	Greenberg Traurig Pa Pac	\$ 250.00
3/23/2018	Political Action Comm. (PAC)	New York Gaming Association Pac	\$ 500.00
3/23/2018	Political Action Comm. (PAC)	New York Thoroughbred Horsemans Assoc Inc Pac	\$ 250.00
3/23/2018	Political Action Comm. (PAC)	Nys Troopers Pac	\$ 250.00

¹ New York State Board of Elections, Search Candidates and Campaign Disclosures, <https://publicreporting.elections.ny.gov/CandidateCommitteeDisclosure/CandidateCommitteeDisclosure> (search within "Candidate/Committee Disclosures" for "Andrew Garbarino").

3/23/2018	Political Action Comm. (PAC)	Nys Veterinary Political Education Comm	\$ 500.00
3/23/2018		Saratoga Casino Holdings Llc	\$ 250.00
3/23/2018	Political Action Comm. (PAC)	Superior Officers Assoc Nassau Cty Police Dep Pec	\$ 250.00
3/23/2018	Political Action Comm. (PAC)	Yonkers Raceway Pac	\$ 500.00
3/26/2018		J Strategies Inc	\$ 250.00
3/26/2018	Political Action Comm. (PAC)	Empire Dental Pac	\$ 250.00
3/26/2018	Political Action Comm. (PAC)	Hanys Pac	\$ 500.00
3/26/2018		Plummer & Wigger Llc	\$ 250.00
4/10/2018	Political Action Comm. (PAC)	Correction Officers Benevolent Assoc Pac	\$ 500.00
4/16/2018	Political Action Comm. (PAC)	Metropolitan Package Store Assoc Pac	\$ 250.00
4/16/2018	Political Action Comm. (PAC)	Soa Of New York Pac Inc	\$ 250.00
4/25/2018	Political Action Comm. (PAC)	New York Bankers Pac	\$ 250.00
5/4/2018	Political Action Comm. (PAC)	Pfizer Pac	\$ 500.00
5/19/2018	Partnership, including LLPs	Harter Secrest & Emery Llp	\$ 500.00
5/19/2018	Political Action Comm. (PAC)	Lawpac Of New York	\$ 1,000.00
6/13/2018	Unitemized		\$ 75.00
6/13/2018		Sayville Ferry Service Inc	\$ 200.00
6/13/2018	Political Action Comm. (PAC)	Mason Tenders District Council Greater Ny Pac	\$ 1,100.00
6/18/2018	Partnership, including LLPs	De Barbieri & Associates	\$ 100.00
6/18/2018	Individual		\$ 100.00
6/18/2018	Individual		\$ 100.00
6/18/2018	Individual		\$ 100.00
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6/18/2018	Individual		\$ 100.00
6/18/2018	Unitemized		\$ 100.00
6/18/2018	Individual		\$ 200.00
6/18/2018	Individual		\$ 200.00
6/18/2018	Individual		\$ 250.00
6/18/2018	Individual		\$ 250.00
6/18/2018	Individual		\$ 250.00
6/18/2018	Individual		\$ 500.00
6/18/2018	Individual		\$ 1,000.00
6/18/2018		All County Block & Supply Corp	\$ 1,000.00
6/18/2018		Germano & Cahill Pc	\$ 100.00
6/18/2018		Great South Bay Seafood Co	\$ 100.00
6/18/2018		Michael G Pieslak Agency Inc	\$ 100.00
6/18/2018	Political Action Comm. (PAC)	Metropolitan Package Store Assoc Pac	\$ 250.00
6/18/2018	Political Action Comm. (PAC)	Plumbers Local Union #200 Political Action Fund	\$ 250.00
6/18/2018	Political Action Comm. (PAC)	Twu Local 252	\$ 100.00

6/21/2018	Partnership, including LLPs	Zaklukiewicz Puzo & Morrissey Llp	\$ 250.00
6/21/2018	Unitemized		\$ 75.00
6/21/2018	Individual		\$ 100.00
6/21/2018	Individual		\$ 100.00
6/21/2018	Individual		\$ 100.00
6/21/2018	Individual		\$ 200.00
6/21/2018	Individual		\$ 200.00
6/21/2018	Individual		\$ 200.00
6/21/2018	Individual		\$ 200.00
6/21/2018		First Adjustment Group Inc	\$ 200.00
6/21/2018		Lands End Abstract Services Ltd	\$ 250.00
6/21/2018		Manhattan Beer Distributors Llc	\$ 1,000.00
6/21/2018		West Sayville Boat Basin Llc	\$ 500.00
6/25/2018	Partnership, including LLPs	Certilman Balin Adler & Hyman Llp	\$ 200.00
6/25/2018	Unitemized		\$ 75.00
6/25/2018	Individual		\$ 100.00
6/25/2018	Individual		\$ 100.00
6/25/2018	Individual		\$ 100.00
6/25/2018	Individual		\$ 500.00
6/25/2018		Brinkman Hardware Corp	\$ 1,000.00
6/25/2018		Pw Grosser Consulting Engineer & Hydrogeologist Pc	\$ 200.00
6/25/2018		The Law Office Of Frederick J Giachetti Pc	\$ 500.00
6/25/2018	Political Action Comm. (PAC)	International Union Of Operating Engineers Pac	\$ 1,000.00
6/25/2018	Political Action Comm. (PAC)	Suffolk County Court Employees Assoc Inc Pac	\$ 100.00
6/25/2018	Political Action Comm. (PAC)	Suffolk County Deputy Sheriffs Pba Pac	\$ 500.00
6/25/2018	Political Action Comm. (PAC)	Superior Officers Assoc Of Police Dept Suf Cty Inc	\$ 1,000.00
6/25/2018	Political Action Comm. (PAC)	Vote/Cope Comm On Political Education Of Nysut	\$ 400.00
6/26/2018	Individual		\$ 100.00
6/26/2018	Individual		\$ 100.00
6/26/2018	Individual		\$ 100.00
6/26/2018	Individual		\$ 100.00
6/26/2018	Individual		\$ 100.00
6/26/2018	Individual		\$ 100.00
6/26/2018	Individual		\$ 100.00
6/26/2018	Individual		\$ 100.00
6/26/2018	Individual		\$ 100.00
6/26/2018	Individual		\$ 100.00
6/26/2018	Individual		\$ 100.00
6/26/2018	Individual		\$ 100.00
6/26/2018	Individual		\$ 150.00
6/26/2018	Individual		\$ 200.00
6/26/2018	Individual		\$ 200.00
6/26/2018	Individual		\$ 200.00
6/26/2018	Individual		\$ 250.00
6/26/2018	Unitemized		\$ 250.00
6/26/2018	Individual		\$ 300.00

6/26/2018	Individual		\$ 400.00
6/26/2018	Individual		\$ 500.00
6/26/2018		Lovin Oven-Lands End Corp	\$ 500.00
6/26/2018		Strategic Planning Systems Inc	\$ 250.00
6/26/2018	Other	Island Public Affairs	\$ 200.00
6/26/2018		Lynn & Peter Llc	\$ 1,500.00
6/26/2018	Political Action Comm. (PAC)	Suffolk County Correction Officers Assoc Pac	\$ 1,000.00
6/26/2018	Political Action Comm. (PAC)	Suffolk County Pba Pac	\$ 1,000.00
6/27/2018	Individual		\$ 500.00
6/27/2018		Dayton T Brown Inc	\$ 100.00
6/29/2018	Individual		\$ 200.00
6/29/2018		Saf-T-Swim Of Westbury Inc	\$ 1,000.00
6/29/2018	Political Action Comm. (PAC)	Sc Detectives Assoc Inc Pac Account	\$ 500.00
7/5/2018	Political Action Comm. (PAC)	Cwa District One Pac	\$ 300.00
7/9/2018	Unitemized		\$ 75.00
7/9/2018		Richard E Wankel Pc	\$ 100.00
7/22/2018	Individual		\$ 500.00
7/25/2018		Jul-Rail Corp	\$ 100.00
7/28/2018		N & P Engineers & Land Sureyors Pllc	\$ 200.00
8/24/2018		Altria Client Services Llc	\$ 250.00
9/20/2018	Political Action Comm. (PAC)	Great South Bay Republican Club Pac	\$ 1,000.00
9/20/2018	Political Action Comm. (PAC)	Rpac Of New York State	\$ 500.00
10/10/2018	Individual		\$ 100.00
10/13/2018	Partnership, including LLPs	De Barbieri & Associates	\$ 100.00
10/13/2018	Partnership, including LLPs	Zaklukiewicz Puzo & Morrissey Llp	\$ 100.00
10/13/2018	Individual		\$ 100.00
10/13/2018	Individual		\$ 100.00
10/13/2018	Individual		\$ 100.00
10/13/2018	Individual		\$ 100.00
10/13/2018	Individual		\$ 100.00
10/13/2018	Individual		\$ 100.00
10/13/2018	Individual		\$ 100.00
10/13/2018	Individual		\$ 100.00
10/13/2018	Individual		\$ 200.00
10/13/2018	Unitemized		\$ 225.00
10/13/2018	Individual		\$ 250.00
10/13/2018	Individual		\$ 250.00
10/13/2018	Individual		\$ 1,000.00
10/13/2018		All County Block & Supply Corp	\$ 1,000.00
10/13/2018		Kay Cameron Jewelers Inc	\$ 100.00
10/13/2018		G.M. O'Shea Properties Llc	\$ 250.00
10/13/2018	Political Action Comm. (PAC)	Merck New York State Pac	\$ 250.00
10/16/2018	Partnership, including LLPs	Certilman Balin Adler & Hyman Llp	\$ 100.00

10/16/2018	Unitemized		\$ 75.00
10/16/2018	Individual		\$ 100.00
10/16/2018		Pw Grosser Consulting Engineer & Hydrogeologist Pc	\$ 100.00
10/16/2018	Political Action Comm. (PAC)	Li Federation Of Labor Cope Account	\$ 250.00
10/16/2018	Political Action Comm. (PAC)	Long Island Builders Pac	\$ 500.00
10/16/2018	Political Action Comm. (PAC)	Suffolk County Republican Women Pac	\$ 100.00
10/18/2018	Unitemized		\$ 25.00
10/18/2018	Individual		\$ 100.00
10/18/2018	Individual		\$ 300.00
10/18/2018		Michael G Pieslak Agency Inc	\$ 100.00
10/18/2018		The Law Office Of Frederick J Giachetti Pc	\$ 250.00
10/18/2018	Other	Cricket'S Restaurant	\$ 100.00
10/18/2018		Fairway Manor Llc	\$ 500.00
10/18/2018	Political Action Comm. (PAC)	Suffolk County Correction Officers Assoc Pac	\$ 250.00
10/18/2018	Political Action Comm. (PAC)	Superior Officers Assoc Of Police Dept Suf Cty Inc	\$ 100.00
10/19/2018	Individual		\$ 100.00
10/19/2018	Individual		\$ 100.00
10/19/2018	Individual		\$ 500.00
10/19/2018		Hawthorne Global Aviation Services Llc	\$ 500.00
10/23/2018	Individual		\$ 100.00
10/23/2018	Individual		\$ 100.00
10/23/2018	Individual		\$ 100.00
10/23/2018	Individual		\$ 100.00
10/23/2018	Individual		\$ 100.00
10/23/2018	Individual		\$ 100.00
10/23/2018	Individual		\$ 100.00
10/23/2018	Individual		\$ 150.00
10/23/2018	Individual		\$ 200.00
10/23/2018	Individual		\$ 200.00
10/23/2018	Individual		\$ 250.00
10/23/2018	Individual		\$ 250.00
10/23/2018	Individual		\$ 250.00
10/23/2018	Individual		\$ 500.00
10/23/2018	Unitemized		\$ 750.00
10/23/2018		Beach House Communications Inc	\$ 250.00
10/23/2018		Bryn Elliott Real Estate Inc	\$ 250.00
10/23/2018		Double R Contracting Inc	\$ 250.00
10/23/2018		Germano & Cahill Pc	\$ 150.00
10/23/2018		Jul-Rail Corp	\$ 100.00
10/23/2018		Lovin Oven Catering Of Suffolk Inc	\$ 1,000.00
10/23/2018		Magniflood Inc	\$ 500.00
10/23/2018		Richard E Wankel Pc	\$ 100.00
10/23/2018		Strategic Planning Systems Inc	\$ 100.00

10/23/2018	Political Action Comm. (PAC)	Association Of Municipal Employees Pac	\$ 1,000.00
10/23/2018	Other	Brinkman'S	\$ 200.00
10/23/2018	Political Action Comm. (PAC)	Cse Political Action Fund	\$ 500.00
10/23/2018	Political Action Comm. (PAC)	Cwa District One Pac	\$ 300.00
10/23/2018	Political Committee	Islip Town Conservative Exec Committee	\$ 500.00
10/23/2018		Ms Ava Llc	\$ 500.00
10/23/2018		Plaintiff Investment Funding Llc	\$ 500.00
10/23/2018	Other	Public Employees Federation	\$ 250.00
10/23/2018	Political Action Comm. (PAC)	Sc Detectives Assoc Inc Pac Account	\$ 300.00
10/23/2018	Political Action Comm. (PAC)	Suffolk County Deputy Sheriffs Pba Pac	\$ 250.00
10/23/2018	Political Action Comm. (PAC)	Suffolk County Pba Pac	\$ 300.00
10/23/2018		West Sayville Boat Basin Llc	\$ 300.00
10/23/2018	Political Committee		\$ 75.00
10/24/2018	Individual		\$ 250.00
10/27/2018	Individual		\$ 200.00
10/27/2018	Individual		\$ 501.00
10/29/2018	Unitemized		\$ 50.00
10/29/2018	Individual		\$ 200.00
10/29/2018	Individual		\$ 500.00
10/29/2018	Political Action Comm. (PAC)	International Union Of Operating Engineers Pac	\$ 500.00
10/31/2018	Individual		\$ 500.00
11/4/2018	Individual		\$ 200.00
11/5/2018		Jonathan B Manley Pc	\$ 200.00
11/5/2018	Political Action Comm. (PAC)	International Union Of Operating Engineers Pac	\$ 1,000.00
11/6/2018	Unitemized		\$ 50.00
11/8/2018	Individual		\$ 2,000.00
11/30/2018	Political Action Comm. (PAC)	Mason Tenders District Council Greater Ny Pac	\$ 1,100.00
12/27/2018	Unitemized		\$ 25.00
2/20/2019	Political Action Comm. (PAC)	Medical Liability Mutual Insurance Company Pac	\$ 250.00
2/20/2019	Political Action Comm. (PAC)	Superior Officers Assoc Of Police Dept Suf Cty Inc	\$ 250.00
2/20/2019	Political Action Comm. (PAC)	The Life Insurance Council Of New York Pac	\$ 500.00
2/22/2019	Individual		\$ 100.00
2/22/2019		Yoswein New York Inc	\$ 250.00
2/22/2019	Political Action Comm. (PAC)	Association Of Municipal Employees Pac	\$ 500.00
2/22/2019	Political Action Comm. (PAC)	New York Insurance Assoc Inc Pac	\$ 250.00
2/22/2019	Political Action Comm. (PAC)	Tuition Assistance Program Pac	\$ 250.00
2/26/2019	Individual		\$ 250.00
2/26/2019	Political Action Comm. (PAC)	Dea Cope	\$ 250.00
3/1/2019	Individual		\$ 100.00
3/1/2019	Individual		\$ 250.00
3/1/2019	Individual		\$ 250.00
3/1/2019		Monticello Harness Horseman'S Association Inc	\$ 250.00
3/1/2019		National Coverage Corporation	\$ 500.00

3/1/2019	Political Action Comm. (PAC)	Mta Pba Pac Fund	\$ 250.00
3/1/2019	Political Action Comm. (PAC)	New York Gaming Association Pac	\$ 250.00
3/1/2019	Political Action Comm. (PAC)	Police Conference Of Ny Inc Pac	\$ 250.00
3/1/2019	Political Action Comm. (PAC)	Rpac Of New York State	\$ 300.00
3/1/2019	Political Action Comm. (PAC)	Sc Detectives Assoc Inc Pac Account	\$ 250.00
3/1/2019	Political Action Comm. (PAC)	Suffolk County Pba Pac	\$ 500.00
3/1/2019	Political Action Comm. (PAC)	Vote/Cope Comm On Political Education Of Nysut	\$ 500.00
3/7/2019	Individual		\$ 250.00
3/7/2019		J Strategies Inc	\$ 250.00
3/7/2019	Political Action Comm. (PAC)	Detective Assoc Inc Police Dept Cty Of Nassau Pac	\$ 250.00
3/7/2019	Political Action Comm. (PAC)	Greenberg Traurig Pa Pac	\$ 250.00
3/7/2019	Political Action Comm. (PAC)	Independent Agents Pac	\$ 250.00
3/7/2019		Jem Associates Llc	\$ 250.00
3/7/2019	Political Action Comm. (PAC)	Nassau County Pba Pac	\$ 250.00
3/7/2019	Political Action Committee (PAC)	New York Thoroughbred Horsemans Assoc Inc Pac	\$ 250.00
3/7/2019	Political Action Comm. (PAC)	Nys Ssocation Of Pbas	\$ 250.00
3/7/2019	Political Action Comm. (PAC)	Plummer & Wigger Llc	\$ 250.00
3/7/2019	Political Action Comm. (PAC)	Property Casualty Insurers Assoc Of America Pac	\$ 500.00
3/7/2019	Political Action Comm. (PAC)	State Street Associates Pac	\$ 500.00
3/7/2019	Political Action Comm. (PAC)	Superior Officers Assoc Ncpd Pec	\$ 250.00
3/7/2019		The Vidal Group Llc	\$ 300.00
3/12/2019		New York Metro Ahu Inc	\$ 250.00
3/12/2019	Political Action Comm. (PAC)	Empire Dental Pac	\$ 250.00
3/15/2019	Political Action Comm. (PAC)	Ny Pia Political Action Committee	\$ 500.00
3/22/2019		Carco Group Inc	\$ 350.00
3/22/2019	Political Action Comm. (PAC)	Hanys Pac	\$ 250.00
3/22/2019	Political Action Comm. (PAC)	Ny Build Pac	\$ 250.00
4/4/2019	Partnership, including LLPs	Harter Secrest & Emery Llp	\$ 1,500.00
4/4/2019		Nationwide Mutual Insurance Company	\$ 250.00
4/4/2019	Political Action Comm. (PAC)	Life Insurance Council Of Ny Pac	\$ 500.00
4/4/2019	Political Action Comm. (PAC)	Pfizer Pac	\$ 500.00
4/4/2019	Political Action Comm. (PAC)	Uniformed Firefighters Assn Firepac	\$ 250.00
4/17/2019		Professional Insurance Wholesalers Assoc Nys Inc	\$ 250.00
4/27/2019		Boehringer Ingelheim Usa Corporation	\$ 250.00
5/1/2019		Gna Corporation	\$ 250.00
5/2/2019		The Charter Oaks Fire Insurance Company	\$ 500.00
5/17/2019	Political Action Committee (PAC)	Lawpac Of New York	\$ 1,000.00
5/24/2019	Political Action Comm. (PAC)	Afgi Pac	\$ 500.00
6/8/2019	Individual		\$ 100.00
6/8/2019	Individual		\$ 125.00
6/8/2019	Individual		\$ 125.00

6/8/2019	Individual		\$ 200.00
6/8/2019		First Adjustment Group Inc	\$ 500.00
6/8/2019		Lovin Oven-Lands End Corp	\$ 1,000.00
6/14/2019	Unitemized		\$ 75.00
6/14/2019	Individual		\$ 100.00
6/14/2019	Individual		\$ 100.00
6/14/2019	Individual		\$ 100.00
6/14/2019	Individual		\$ 125.00
6/14/2019	Individual		\$ 125.00
6/14/2019	Individual		\$ 125.00
6/14/2019	Individual		\$ 125.00
6/14/2019	Individual		\$ 125.00
6/14/2019	Individual		\$ 300.00
6/14/2019	Individual		\$ 1,000.00
6/14/2019		All County Block & Supply Corp	\$ 1,500.00
6/14/2019		Carco Group Inc	\$ 125.00
6/14/2019		Double R Contracting Inc	\$ 250.00
6/14/2019		Pw Grosser Consulting Engineer & Hydrogeologist Pc	\$ 250.00
6/14/2019		Vanderbilt Auto Body li Ltd	\$ 100.00
6/14/2019	Other	Brinkman'S	\$ 1,000.00
6/14/2019	Political Action Comm. (PAC)	Long Island Builders Pac	\$ 250.00
6/17/2019	Unitemized		\$ 75.00
6/17/2019	Individual		\$ 125.00
6/17/2019	Individual		\$ 125.00
6/17/2019	Individual		\$ 250.00
6/17/2019	Individual		\$ 1,000.00
6/17/2019		Michael G Pieslak Agency Inc	\$ 125.00
6/17/2019		Richard E Wankel Pc	\$ 100.00
6/17/2019		South Shore Abstract Inc	\$ 250.00
6/17/2019	Political Action Comm. (PAC)	Cwa District One Pac	\$ 250.00
6/17/2019		Hawthorne Global Aviation Services Llc	\$ 125.00
6/17/2019	Political Action Comm. (PAC)	Suffolk County Correction Officers Assoc Inc Pac	\$ 625.00
6/17/2019		West Sayville Boat Basin Llc	\$ 300.00
6/24/2019	Partnership, including LLPs	Certilman Balin Adler & Hyman Llp	\$ 250.00
6/24/2019	Partnership, including LLPs	De Barbieri & Associates	\$ 100.00
6/24/2019	Unitemized		\$ 75.00
6/24/2019	Individual		\$ 100.00
6/24/2019	Individual		\$ 125.00
6/24/2019	Individual		\$ 125.00
6/24/2019	Individual		\$ 150.00
6/24/2019	Individual		\$ 250.00
6/24/2019		Peter Moreno Inc	\$ 100.00
6/24/2019		Snapper Inn Inc	\$ 200.00

6/24/2019		The Law Office Of Frederick J Giachetti Pc	\$ 500.00
6/24/2019	Political Action Comm. (PAC)	Association Of Municipal Employees Pac	\$ 1,500.00
6/24/2019		Fairway Manor Llc	\$ 500.00
6/24/2019	Political Action Comm. (PAC)	International Union Of Operating Engineers Pac	\$ 1,000.00
6/24/2019	Political Action Comm. (PAC)	Mason Tenders District Council Greater Ny Pac	\$ 1,000.00
6/24/2019	Political Action Comm. (PAC)	Sc Detectives Assoc Inc Pac Account	\$ 250.00
6/24/2019	Political Action Comm. (PAC)	Suffolk County Deputy Sheriffs Pba Pac	\$ 500.00
6/24/2019	Political Action Comm. (PAC)	Suffolk County Pba Pac	\$ 625.00
6/24/2019	Political Action Comm. (PAC)	Superior Officers Assoc Of Police Dept Suf Cty Inc	\$ 1,000.00
6/24/2019	Political Action Comm. (PAC)	Uniformed Firefighters Assn Firepac	\$ 250.00
6/25/2019	Individual		\$ 1,500.00
6/28/2019	Individual		\$ 250.00
7/1/2019	Individual		\$ 100.00
7/1/2019	Individual		\$ 100.00
7/1/2019	Individual		\$ 125.00
7/1/2019	Individual		\$ 125.00
7/1/2019	Individual		\$ 125.00
7/1/2019	Individual		\$ 125.00
7/1/2019	Individual		\$ 125.00
7/1/2019	Individual		\$ 125.00
7/1/2019	Individual		\$ 125.00
7/1/2019	Individual		\$ 150.00
7/1/2019	Unitemized		\$ 150.00
7/1/2019	Unitemized		\$ 150.00
7/1/2019	Individual		\$ 200.00
7/1/2019	Individual		\$ 250.00
7/1/2019	Individual		\$ 500.00
7/1/2019	Individual		\$ 500.00
7/1/2019		Lovin Oven-Lands End Corp	\$ 1,000.00
7/1/2019		Saf-T-Swim Of Westbury Inc	\$ 1,000.00
7/1/2019		Suffolk Realty Group Inc	\$ 250.00
7/1/2019		Alder Solutions Llc	\$ 500.00
7/1/2019		Casaburi Llc	\$ 250.00
7/1/2019	Other	Committee For Medical Eye Care	\$ 500.00
7/1/2019	Other	Edwards And Company	\$ 1,500.00
7/1/2019	Political Committee	Friends Of Chad A Lupinacci	\$ 250.00
7/1/2019	Political Action Comm. (PAC)	International Union Of Operating Engineers Pac	\$ 1,500.00
7/1/2019	Political Committee	Islip Town Conservative Exec Committee	\$ 250.00
7/2/2019	Unitemized		\$ 150.00
7/5/2019	Partnership, including LLPs	Zaklukiewicz Puzo & Morrissey Llp	\$ 125.00
7/5/2019		Germano & Cahill Pc	\$ 250.00
7/5/2019		Magniflood Inc	\$ 125.00
7/5/2019	Political Action Comm. (PAC)	Vote/Cope Comm On Political Education Of Nysut	\$ 750.00
7/10/2019	Individual		\$ 200.00

7/19/2019	Political Action Comm. (PAC)	Empire Health Pac	\$ 1,500.00
7/19/2019	Political Action Comm. (PAC)	Fire Marshal Benevolent Assoc Of Nassau County Pac	\$ 125.00
7/19/2019	Political Action Comm. (PAC)	National Grid Voluntary Nys Pac	\$ 500.00
7/19/2019	Political Action Comm. (PAC)	Neighborhood Preservation Pac	\$ 500.00
7/19/2019	Political Action Comm. (PAC)	Reid Mcnally & Savage Pac	\$ 250.00
8/2/2019	Unitemized		\$ 50.00
8/31/2019	Political Action Comm. (PAC)	Merck New York State Pac	\$ 500.00
9/7/2019	Other	Allstate Fire And Casualty Insurance Company	\$ 500.00
9/22/2019		Altria Client Services Llc	\$ 500.00
9/28/2019	Political Action Comm. (PAC)	Aetna Inc Political Action Committee	\$ 500.00
11/2/2019	Political Action Comm. (PAC)	Nelson & Pope Political Action Committee	\$ 250.00
1/14/2020	Political Action Comm. (PAC)	Lawpac Of New York	\$ 1,000.00
2/21/2020		S C Restaurant & Tavern Assoc Inc	\$ 1,000.00
3/9/2020		Brightwaters Building Company Inc	\$ 250.00
4/4/2020		Carco Group Inc	\$ 200.00
4/4/2020		Cornell Design Corp	\$ 100.00
4/4/2020		Sir Corp	\$ 150.00
7/19/2020		Rechler Equity I Llc	\$ 1,000.00
6/11/2018		Citizens For Saladino	\$ 500.00
8/24/2020		Alexios Apazidis Md Pc	\$ 500.00
8/27/2020		Panzner Demolition And Abatement Corp	\$ 150.00
8/27/2020		Richard E Wankel Pc	\$ 100.00
9/1/2020		The Groneman Group Inc	\$ 100.00
11/5/2020	Unitemized		\$ 200.00
11/5/2020		All Access Transportation Service Inc	\$ 200.00
11/5/2020		J Bradford Kenealy Pc	\$ 250.00

ATTACHMENT 2
State Committee's Expenditures (Dec. 6, 2019 – Jan. 10, 2021)¹

Date	Entity Name	Amount	Purpose Code	Explanation
12/6/2019	The Sayville Inn	\$ (151.24)	Other: Must Provide Explanation	Meal
12/9/2019	Bayport Flower Houses Inc	\$ (177.05)	Other: Must Provide Explanation	Donation
12/9/2019	Bayport Flower Houses Inc	\$ (170.53)	Other: Must Provide Explanation	Donation
12/12/2019	The Lonesome Dove Western Bistro	\$ (674.24)	Other: Must Provide Explanation	Meal
12/14/2019	Lt Michael P Murphy Navy Seal Museum	\$ (50.00)	Other: Must Provide Explanation	Sponsorship
12/20/2019	Snapper Inn Inc	\$ (513.58)	Other: Must Provide Explanation	Meal
12/23/2019	The Sayville Inn	\$ (117.99)	Other: Must Provide Explanation	Meal
12/27/2019	American Express	\$ (459.97)	Reimbursement	
12/27/2019	Cafe Joelle	\$ (127.14)	Other: Must Provide Explanation	Meal
12/27/2019	Delta Air Lines	\$ -	Reimbursement Detail Item	Memo: \$459.97, Other-Travel
1/2/2020	Tweed'S Restaurant & Buffalo Bar	\$ (171.75)	Other: Must Provide Explanation	Meal
1/7/2020	The Sayville Inn	\$ (139.99)	Other: Must Provide Explanation	Meal
1/12/2020	Nassau County Republican Committee	\$ (250.00)	Political Contributions	
1/21/2020	Scgop	\$ (1,000.00)		
1/24/2020	Bayport Blue Point Chamber Of Commerce	\$ (405.00)	Other: Must Provide Explanation	Sponsorship
1/27/2020	Desmond Restaurant	\$ (67.50)	Other: Must Provide Explanation	Meal
1/28/2020	Brookhampton Conservative Party	\$ (1,000.00)	Political Contributions	
1/30/2020	Bayport Blue Point Chamber Of Commerce	\$ (75.00)	Other: Must Provide Explanation	Civic Event
1/30/2020	East End Republican Club	\$ (300.00)	Political Contributions	
1/30/2020	Suffolk County Young Republicans	\$ (250.00)	Political Contributions	

¹ New York State Board of Elections, Search Candidates and Campaign Disclosures, <https://publicreporting.elections.ny.gov/CandidateCommitteeDisclosure/CandidateCommitteeDisclosure> (search within "Candidate/Committee Disclosures" for "Andrew Garbarino"). Contributions made to political committees are highlighted in red, while payments made for alleged federal campaign expenses are highlighted in yellow.

2/5/2020	Chase Card Services	\$ (285.00)	Reimbursement	
2/5/2020	Holiday Inn Express	\$ -	Reimbursement Detail Item	Memo: \$285, Other: Travel
2/5/2020	Islip Town Conservative Exec Committee	\$ (250.00)	Political Contributions	
2/6/2020	Nassau County Conservative Party	\$ (350.00)	Political Contributions	
2/7/2020		\$ (49.76)	Other: Must Provide Explanation	Meal
2/7/2020		\$ (47.25)	Other: Must Provide Explanation	Travel
2/12/2020	Dove & Deer	\$ (250.34)	Other: Must Provide Explanation	Meal
2/18/2020	Cafe Joelle	\$ (310.72)	Other: Must Provide Explanation	Meal
2/20/2020	Sayville Athletic Club	\$ (59.67)	Other: Must Provide Explanation	Meal
2/22/2020	Aoh Division 7	\$ (100.00)	Other: Must Provide Explanation	Dinner Event
2/24/2020	Republican Assembly Campaign Committee	\$ (250.00)		
2/26/2020	Post Eatery & Bar	\$ (355.12)	Other: Must Provide Explanation	Meal
2/28/2020		\$ (30.45)	Other: Must Provide Explanation	Travel
3/1/2020	Garbarino For Congress	\$ (800.00)	Political Contributions	
3/4/2020	Greater Sayville Chamber Of Commerce	\$ (100.00)	Other: Must Provide Explanation	Civic Group
3/4/2020	Greater Sayville Chamber Of Commerce	\$ (68.00)	Other: Must Provide Explanation	Civic Group
3/4/2020	Ocean Prime	\$ (256.70)	Other: Must Provide Explanation	Meal
3/9/2020	204 North Kitchen & Cocktails	\$ (370.78)	Other: Must Provide Explanation	Meal
3/13/2020	Lalota For New York	\$ (5,000.00)	Political Contributions	
3/16/2020	Friends Of Andrew Raia	\$ (1,000.00)	Political Contributions	
3/25/2020	Dang Bbq	\$ (177.57)	Other: Must Provide Explanation	Meal
4/2/2020	American Express	\$ (295.40)	Reimbursement	
4/2/2020	Angelo'S 677 Prime	\$ (218.72)	Other: Must Provide Explanation	Meal
4/2/2020	Delta Air Lines	\$ -	Reimbursement Detail Item	Memo: \$295.40, Other-Travel
4/9/2020	Ccc Enterprises	\$ (1,800.00)	Campaign Consultant	
4/9/2020	Scgop	\$ (500.00)		
4/9/2020	Sir Speedy Printing	\$ (286.00)	Office	

4/20/2020	Cafe Joelle	\$ (146.09)	Other: Must Provide Explanation	Meal
4/21/2020	Greater Sayville Chamber Of Commerce	\$ (250.00)	Other: Must Provide Explanation	Donation
5/1/2020	Sayville Virtual Bar Crawl	\$ (199.44)	Other: Must Provide Explanation	Meal
5/4/2020	Cafe Joelle	\$ (179.90)	Other: Must Provide Explanation	Meal
5/7/2020	Audrey'S Fine Baked Goods Inc	\$ (180.00)	Other: Must Provide Explanation	Donation
5/11/2020	Ccc Enterprises	\$ (1,000.00)	Campaign Literature	
5/14/2020	Cafe Joelle	\$ (142.49)	Other: Must Provide Explanation	Meal
5/14/2020	Schneps Media	\$ (850.00)	Print Ads	
5/26/2020	Bayport Flower Houses Inc	\$ (162.94)	Other: Must Provide Explanation	Memorial Day Wreaths
5/26/2020	Le Soir	\$ (234.53)	Other: Must Provide Explanation	Meal
6/1/2020	The Sayville Inn	\$ (214.02)	Other: Must Provide Explanation	Meal
6/4/2020	Cafe Joelle	\$ (194.94)	Other: Must Provide Explanation	Meal
6/19/2020	Ccc Enterprises	\$ (1,000.00)	Campaign Literature	
6/19/2020	Friends Of Jarett Gandolfo	\$ (4,800.00)	Political Contributions	
6/19/2020	Sayville Little League	\$ (250.00)	Other: Must Provide Explanation	Sponsorship
6/22/2020	Portly Villager	\$ (173.12)	Other: Must Provide Explanation	Meal
6/25/2020	Staples	\$ (67.33)	Office	
6/25/2020	The Sayville Inn	\$ -	Reimbursement Detail Item	Memo: \$1,570.91- Other Meal
7/17/2020	Mannino'S Restaurant	\$ (529.80)	Other: Must Provide Explanation	Meal
7/24/2020	Paesans Pizza	\$ (67.20)	Other: Must Provide Explanation	Meal
7/25/2020	Donald A Rettaliata Jr	\$ (1,570.91)	Reimbursement	
7/29/2020	Land'S End	\$ (300.00)	Fundraising	
7/31/2020	Donald A Rettaliata Jr	\$ (350.00)	Professional Services	
7/31/2020	Land's End	\$ (2,172.50)	Fundraising	
7/31/2020	Republican Assembly Campaign Committee	\$ (5,000.00)		
7/31/2020	The Sayville Inn	\$ (88.00)	Other: Must Provide Explanation	Meal
7/31/2020	Village Club Of Sands Point	\$ (65.61)	Other: Must Provide Explanation	Meal

8/3/2020	Cafe Joelle	\$ (164.54)	Other: Must Provide Explanation	Meal
8/3/2020	Nassau County Republican Committee	\$ (2,000.00)	Political Contributions	
8/6/2020	Ccc Enterprises	\$ (1,500.00)	Campaign Literature	
8/17/2020	Cafe Joelle	\$ (67.40)	Other: Must Provide Explanation	Meal
8/18/2020	Republican Assembly Campaign Committee	\$ (5,000.00)		
8/18/2020	Suffolk Detectives Association Inc	\$ (100.00)	Other: Must Provide Explanation	Sponsorship
8/20/2020	Superior Officers Assoc Of Police Dept Suf Cty Inc	\$ (200.00)	Other: Must Provide Explanation	Sponsorship
8/25/2020	The Sayville Inn	\$ (190.99)	Other: Must Provide Explanation	Meal
8/26/2020	Tap Room	\$ (173.39)	Other: Must Provide Explanation	Meal
8/28/2020	Brookhampton Conservative Party	\$ (500.00)	Political Contributions	
8/28/2020	Ccc Enterprises	\$ (1,000.00)	Campaign Literature	
8/28/2020	Donald A Rettaliata Jr	\$ (225.00)	Professional Services	
8/28/2020	Friends Of Tom O'Mara	\$ (1,000.00)	Political Contributions	
8/28/2020	Friends Of Tony Palumbo	\$ (1,000.00)	Political Contributions	
9/1/2020	The Neighborhood House	\$ (107.72)	Other: Must Provide Explanation	Sponsorship
9/3/2020	Cafe Joelle	\$ (142.40)	Other: Must Provide Explanation	Meal
9/3/2020	Sir Speedy Printing	\$ (240.76)	Office	
9/8/2020	Donald A Rettaliata Jr	\$ (600.00)	Professional Services	
9/14/2020		\$ (29.76)	Other: Must Provide Explanation	Meal
9/15/2020	Boyle For Senate	\$ (500.00)	Political Contributions	
9/18/2020	Staples	\$ -	Reimbursement Detail Item	Memo: \$381.17, Office Expense
9/19/2020	Ccc Enterprises	\$ (1,000.00)	Campaign Literature	
9/20/2020	Nassau County Republican Committee	\$ (200.00)	Political Contributions	
9/20/2020	Sc Detectives Assoc Inc	\$ (300.00)	Other: Must Provide Explanation	Sponsorship
9/23/2020	Houdek'S Spirit Shoppe	\$ (217.24)	Other: Must Provide Explanation	Donation
9/28/2020	Cafe Joelle	\$ (148.83)	Other: Must Provide Explanation	Meal
9/28/2020	Nassau County Republican Committee	\$ (100.00)	Political Contributions	

9/30/2020	Donna Boyle	\$ (381.17)	Reimbursement	
10/5/2020		\$ (30.72)	Office	
10/6/2020	The Sayville Inn	\$ (120.16)	Other: Must Provide Explanation	Meal
10/13/2020	The Sayville Chocolatier	\$ (145.01)	Other: Must Provide Explanation	Donation
10/18/2020	Suffolk County Correction Officers Assoc Pac	\$ (400.00)	Other: Must Provide Explanation	Sponsorship
10/27/2020	Cafe Joelle	\$ (125.62)	Other: Must Provide Explanation	Meal
10/28/2020	The Sayville Inn	\$ (168.18)	Other: Must Provide Explanation	Meal
11/3/2020	The Sayville Inn	\$ (139.28)	Other: Must Provide Explanation	Meal
11/9/2020	Don Quijote	\$ (220.00)	Other: Must Provide Explanation	Meal
11/25/2020	Barrique Kitchen & Wine Bar	\$ (213.93)	Other: Must Provide Explanation	Meal
11/30/2020	Lake Buy Rite Liquors	\$ (2,832.76)	Other: Must Provide Explanation	Gifts
11/30/2020		\$ (25.00)	Bank Fees	
12/15/2020	Fairway Manor Llc	\$ (500.00)		
12/28/2020	Fairfield Inn & Suites	\$ -	Reimbursement Detail Item	Memo: \$112.86, Other-Travel
12/31/2020		\$ (25.00)	Bank Fees	
1/9/2021	American Express	\$ (112.86)	Reimbursement	
1/10/2021	Friends Of Jim O'Connor	\$ (1,000.00)	Political Contributions	
1/10/2021		\$ (20.38)	Office	

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Andrew Garbarino **MUR: 8062**
Friends of Andrew Garbarino
Garbarino for Congress and
Lisa Lisker in her official capacity
as treasurer

I. INTRODUCTION

The Complaint in this matter alleges that 2020 U.S. House candidate 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, “Respondents”) violated the soft money prohibition of the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations in several ways. First, the Complaint alleges that Garbarino and the Federal Committee accepted an \$800 transfer from the State Committee. Second, it alleges that the State Committee made in-kind contributions totaling \$10,622.50 to the Federal Committee by paying for several of Garbarino’s federal campaign expenses. Finally, the Complaint alleges that the State Committee received \$3,550 in corporate contributions after Garbarino became a federal candidate, and was no longer a state candidate, and contributed \$30,700 to state and local candidates and committees without instituting a reasonable accounting method to ensure such contributions were not made with soft money.

Respondents admit that the State Committee contributed \$800 to the Federal Committee but argue that the amount is *de minimis* and should be dismissed. As to the allegations that the State Committee paid for Garbarino’s federal campaign expenses, Respondents contend that the allegations do not satisfy the Act’s reason to believe standard to warrant an investigation.

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1 Finally, they argue that the State Committee’s receipt of corporate contributions and making
2 contributions in nonfederal elections are outside the Commission’s jurisdiction.

3 For the reasons set forth below, the Commission finds reason to believe that Respondents
4 violated 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d) in connection with the State
5 Committee’s \$800 transfer to the Federal Committee. The Commission also finds reason to
6 believe that Garbarino and the State Committee violated 52 U.S.C. § 30125(e)(1)(B) by
7 receiving and spending nonfederal funds in connection with an election for nonfederal office.
8 The Commission further finds reason to believe that Garbarino and the State Committee violated
9 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d) by spending nonfederal funds in
10 connection with an election for federal office. Finally, the Commission finds reason to believe
11 that the Federal Committee violated 52 U.S.C. §§ 30104(b), 30125(e)(1)(A) and 11 C.F.R.
12 § 110.3(d) by receiving, and failing to report, in-kind contributions from the State Committee in
13 connection with an election for federal office.

14 II. FACTUAL BACKGROUND

15 Andrew Garbarino is the U.S. Representative for New York’s 2nd Congressional District,
16 having first won election to federal office in 2020.¹ He filed his initial statement of candidacy on
17 December 6, 2019.² Garbarino for Congress is his principal campaign committee.³ Prior to
18 serving in Congress, Garbarino was a member of the New York State Assembly from 2013 to

¹ New York State Board of Elections, 2020 Election Results, <https://www.elections.ny.gov/2020ElectionResults.html> (select “U.S. Congress”). Garbarino was sworn in on January 3, 2021. Andrew Garbarino, <https://garbarino.house.gov/media/press-releases/congressman-andrew-garbarino-sworn-117th-congress>. Garbarino was reelected in 2022. *See* New York State Board of Elections, 2022 Election Results, <https://www.elections.ny.gov/2022ElectionResults.html> (select “Representative in Congress”).

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

³ Statement of Organization, Garbarino for Congress (Jan. 22, 2023), <https://docquery.fec.gov/pdf/078/202301229574895078/202301229574895078.pdf>.

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1 2020.⁴ The available information indicates he was not a candidate for state office in 2020.⁵ His
2 now terminated state campaign committee was Friends of Andrew Garbarino.⁶

3 The State Committee's receipts from December 6, 2019 (the date of Garbarino's
4 Statement of Candidacy) to November 3, 2020 (Election Day), as reported to the New York State
5 Board of Elections, are shown in Figure 1.⁷ It shows that the State Committee received a total of
6 \$4,550 in contributions, of which \$2,550 (56.04%) came from corporations, \$1,000 (21.98%)
7 came from Rechler Equity LLC, and \$1,000 (21.98%) came from LawPAC of NY.

8 **Figure 1**
9

State Committee Contributions Received			
Transaction Date	Transaction Type	Entity Name	Amount
1/14/2020	C - Monetary Contributions Received From All Other	Lawpac Of New York	\$1,000.00
2/21/2020	B - Monetary Contributions Received From Corporation	S C Restaurant & Tavern Assoc Inc	\$1,000.00
3/9/2020	B - Monetary Contributions Received From Corporation	Brightwaters Building Company Inc	\$250.00 ⁸
4/4/2020	B - Monetary Contributions Received From Corporation	Carco Group Inc	\$200.00
4/4/2020	B - Monetary Contributions Received From Corporation	Cornell Design Corp	\$100.00

⁴ See Certified Results from the November 6, 2018 General Election for NYS Assembly at 4, <https://www.elections.ny.gov/NYSBOE/elections/2018/general/2018Assembly.pdf>; NYS Board of Elections Assembly Election Returns Nov. 8, 2016 at 2, <https://www.elections.ny.gov/NYSBOE/elections/2016/General/2016Assembly.pdf>; NYS Board of Elections Assembly Election Returns November 4, 2014 at 2, <https://www.elections.ny.gov/NYSBOE/elections/2014/general/2014Assembly.pdf>; NYS Board of Elections Assembly Election Returns Nov. 6, 2012 at 2, https://www.elections.ny.gov/NYSBOE/elections/2012/General/AD_04-09-2013.pdf.

⁵ Garbarino is not listed as a candidate for any state primary races in 2020. NYS Board of Elections, Certified Election Results from the June 23, 2020 Primary Election, <https://www.elections.ny.gov/NYSBOE/elections/2020/Primary/CertifiedJune232020StatePrimaryResults.pdf>.

⁶ New York State Board of Elections, Search Candidates and Campaign Disclosures, <https://publicreporting.elections.ny.gov/CandidateCommitteeDisclosure/CandidateCommitteeDisclosure> (search within terminated "Candidate/Committee Disclosures" for "Andrew Garbarino").

⁷ *Id.* (select "January Periodic" for the 2021 Filing Year and "July Periodic" for the 2020 Filing Year).

⁸ The Complaint incorrectly lists this contribution amount as \$300. Compl. at 4 (Sept. 2, 2022).

4/4/2020	B - Monetary Contributions Received From Corporation	Sir Corp	\$150.00
7/19/2020	C - Monetary Contributions Received From All Other	Rechler Equity I LLC	\$1,000.00
8/24/2020	B - Monetary Contributions Received From Corporation	Alexios Apazidis Md Pc	\$500.00
8/27/2020	B - Monetary Contributions Received From Corporation	Panzner Demolition And Abatement Corp	\$150.00
8/27/2020	B - Monetary Contributions Received From Corporation	Richard E Wankel Pc	\$100.00 ⁹
9/1/2020	B – Monetary Contributions Received From Corporation	The Groneman Group Inc	\$100.00 ¹⁰
		TOTAL	\$ 4,550

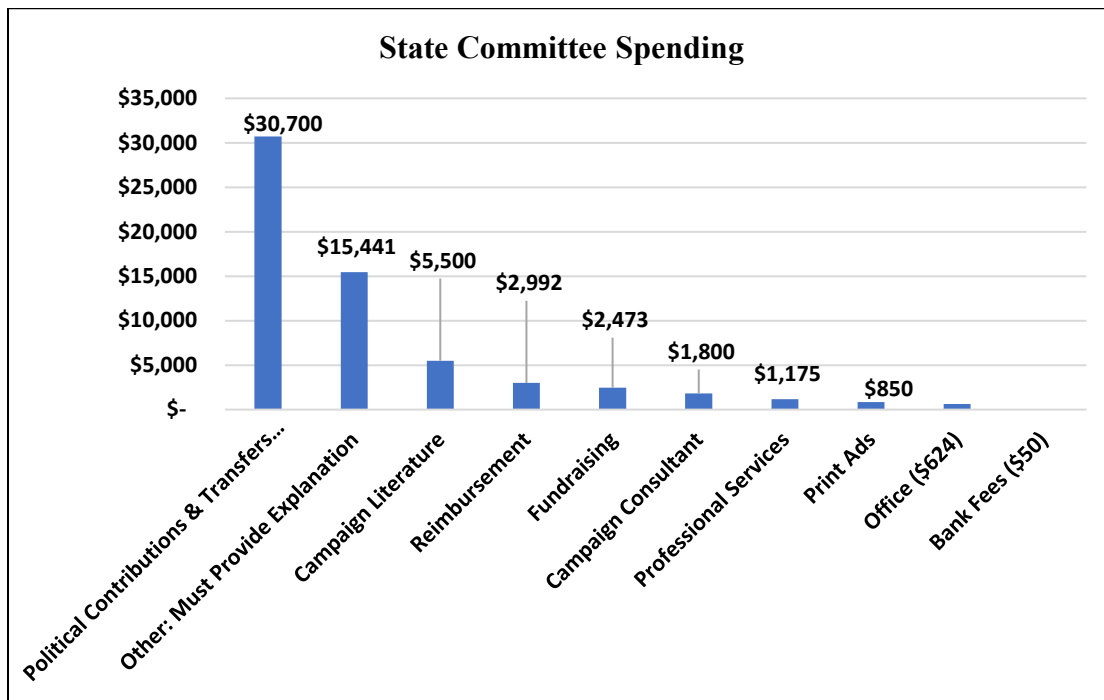
1 The State Committee’s expenditures for the same period are listed in Figure 2. It shows
2 that the State Committee spent a total of \$61,605 on the following categories: political
3 contributions, transfers out, “other: must provide explanation,”¹¹ campaign literature,
4 reimbursement, fundraising, campaign consultant, professional services, print ads, office, and
5 bank fees.

⁹ The Complaint incorrectly lists this contribution amount as \$150. *Id.* at 5.

¹⁰ The Complaint did not include this amount.

¹¹ The category labeled “Other: Must Provide Explanation” consists of the following: civic event (\$75), civic groups (\$168), dinner event (\$100), donation (\$1,289.83), gifts (\$2,832.76), meals (\$8,571.57), Memorial Day wreaths (\$162.94), sponsorship (\$2,162.72), and travel (\$77.70).

FIGURE 2



A. The Complaint and Response

The Complaint alleges that Garbarino and the Federal Committee violated 11 C.F.R. § 110.3(d) by accepting \$800 from the State Committee on March 1, 2020.¹² The Complaint also alleges that Respondents violated 11 C.F.R. § 110.3(d) as a result of the State Committee’s payment of \$7,300 to CCC Enterprises for “campaign literature” and “campaign consultant,” \$2,472 to Land’s End for “fundraising,” and \$850 to Schneps Media for “print ads.”¹³ The Complaint argues that these payments were for the Federal Committee’s campaign expenses and thus in-kind contributions.¹⁴ In support, the Complaint points to the fact that Garbarino was not running for state office in 2020 and that the Federal Committee used CCC Enterprises as a

¹² Compl. at 3, 6.

¹³ *Id.* at 2-4, 7.

¹⁴ *Id.* at 3-4, 7. “Land’s End” refers to a waterfront event venue located in Sayville, NY. See Land’s End Waterfront Catering, <https://www.landsendweddings.com/>.

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1 campaign vendor during the same time period as the State Committee when neither had used its
2 services before.¹⁵ Next, the Complaint alleges that the State Committee’s receipt of \$3,550 in
3 corporate and state political committee contributions after Garbarino became a federal candidate
4 violated 52 U.S.C. § 30125(e)(1)(A)-(B) and 11 C.F.R. §§ 300.61-.62.¹⁶ Finally, the Complaint
5 alleges that the State Committee’s contributions totaling \$30,700, to various state and local
6 candidates and committees after Garbarino’s federal candidacy violated 52 U.S.C.
7 § 30125(e)(1)(B) and 11 C.F.R. §§ 300.62.¹⁷

8 Respondents submitted an unsworn response admitting that the State Committee
9 contributed \$800 to the Federal Committee but argue that the amount is *de minimis* and should
10 be dismissed.¹⁸ As for the allegation that the State Committee paid for Garbarino’s federal
11 campaign expenses, the Response generally asserts that the allegations do not satisfy the Act’s
12 reason to believe standard.¹⁹ With regard to some of the specific expenditures identified in the
13 Complaint, the Response describes the State Committee’s expenditures for “fundraising” as an
14 event “without any solicitation component meant as a thank you to donors and those who had

¹⁵ *Id.* at 4, 7; Friends of Andrew Garbarino, 2020 July Periodic Report (July 17, 2020), <https://publicreporting.elections.ny.gov/CandidateCommitteeDisclosure/CandidateCommitteeDisclosure> (showing payments from State Committee to “CCC Enterprises on May 11, 2020, June 19, 2020, August 6, 2020, August 28, 2020, and September 19, 2020); *FEC Disbursements*: Filtered Results, FEC.gov, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00729954&recipient_name=ccc&wo_year_transaction_period=2020 (showing payments from Federal Committee to “CCC Enterprises” on May 12, 2020, August 6, 2020, September 28, 2020, October 11, 2020, and November 20, 2020).

¹⁶ Compl. at 4-5, 7-8.

¹⁷ *Id.* at 5, 8; *see also* Attach. 2 (compilation of expenditures of Friends of Andrew Garbarino reported to New York State Board of Elections) (showing “political contributions” and transfers out by the State Committee to the Nassau County Republican Committee, “SC GOP,” Brookhampton Conservative Party, Islip Town Conservative Exec Committee, Nassau County Conservative Party, Republican Assembly Campaign Committee, Lalota for New York, Friends of Andrew Raia, Friends of Jarrett Gandolfo, Friends of Tom O’Mara, Friends of Tony Palumbo, and Boyle for Senate).

¹⁸ Resp. at 3 (Nov. 22, 2022) (citing MUR 7367 (Brindisi)).

¹⁹ *Id.* at 2-3.

1 been helpful” during the time Garbarino served in the New York State Assembly.²⁰ The
2 Response states that the State Committee’s payments to CCC Enterprises “also encompassed
3 communications with . . . Garbarino’s constituents about his legislative accomplishments” and
4 argues that Garbarino was permitted to “get[] his name on the ballot to retain his state seat in the
5 event he lost his federal primary.”²¹ As for the payments to CCC Enterprises, the Response
6 argues that there is nothing improper with the State Committee’s use of the same vendor as the
7 Federal Committee.²² Finally, the Response argues that the State Committee’s revenue raising
8 — *i.e.*, the State Committee’s receipt of contributions from corporations and state political
9 committees — is a matter of state and local law and therefore outside the Commission’s
10 jurisdiction.²³

11 III. LEGAL ANALYSIS

12 The Act and Commission regulations prohibit candidates, individuals holding Federal
13 office, agents of a candidate or an individual holding Federal office, or an entity directly or
14 indirectly established, financed, maintained, or controlled (“EFMC”) by or acting on behalf of
15 one or more candidates or individuals holding Federal office from “solicit[ing], receiv[ing],
16 direct[ing], transfer[ing], or spend[ing] funds in connection with an election for Federal office,
17 including funds for any Federal election activity, unless the funds are subject to the limitations,
18 prohibitions, and reporting requirements of this Act”²⁴ and from “solicit[ing], receiv[ing],
19 direct[ing], transfer[ing], or spend[ing] funds in connection with” a nonfederal election unless

²⁰ *Id.* at 2.

²¹ *Id.*

²² *Id.*

²³ *Id.* at 3.

²⁴ 52 U.S.C § 30125(e)(1)(A); 11 C.F.R. § 300.61.

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1 the funds are subject to the Act’s amount limitations and source prohibitions.²⁵ The Commission
2 has determined that a state campaign committee of a federal candidate is, as a matter of law,
3 EFMC’d by the federal candidate and acts on the candidate’s behalf.²⁶

4 Transfers of funds or assets from a candidate’s campaign account for a nonfederal
5 election to his or her principal campaign committee for a federal election are also prohibited.²⁷
6 The prohibition on transferring funds applies broadly and includes payment by the state
7 committee for services to the federal committee.²⁸ Accordingly, a candidate’s state committee’s
8 funds must be kept separate from his or her federal committee’s funds.²⁹ The Act provides an
9 exception to the soft money prohibition in certain circumstances where a federal candidate “is or
10 was also a candidate for State or local office.”³⁰ Such a candidate may solicit, receive, or spend
11 nonfederal funds as long as that solicitation, receipt, or spending: (1) is “solely in connection
12 with such election for State or local office,” (2) “refers only to that State or local candidate” or
13 to other candidates for that same state or local office, and (3) is permitted under state law.³¹
14 Thus, a simultaneous state candidate and federal candidate may spend otherwise impermissible

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

²⁶ See Factual and Legal Analysis (“F&LA”) at 6, MUR 7337 (Debbie Lesko and Re-Elect Debbie Lesko for Senate); F&LA at 9, MUR 7246 (Buddy Carter for Congress, *et al.*); F&LA at 4, MUR 6985 (Zeldin for Senate, *et al.*) (citing Advisory Opinion (“AO”) 2009-26 at 5 (Coulson), AO 2007-01 at 3 (McCaskill), and F&LA at 9, MUR 6601 (Oelrich for Congress)).

²⁷ 11 C.F.R. § 110.3(d). Although not specifically referenced in the Complaint, 52 U.S.C. 30125(e)(1)(A) also applies to this situation. See F&LA at 116, MUR 5646 (Cohen for New Hampshire).

²⁸ F&LA at 5, MUR 6267 (Paton For Senate, *et al.*) (candidate’s federal committee “effectively received prohibited transfer of funds in violation of [52 U.S.C. § 30125(e)] and 11 C.F.R. § 110.3(d) when the candidate’s state committee paid for expenses that were incurred in connection with his federal election.”); F&LA at 12-16, MUR 5646 (Cohen for New Hampshire) (candidate’s federal committee received prohibited transfer of funds when he used state campaign funds to pay for federal campaign expenses); Conciliation Agreement at IV.11, V.1-2, MUR 4974 (Friends of Tiberi, *et al.*) (candidate’s federal and state committees violated 11 C.F.R. § 110.3(d) when his state committee paid for expenses incurred on behalf of his federal committee).

²⁹ 11 C.F.R. § 110.3(d).

³⁰ 52 U.S.C. § 30125(e)(2).

³¹ See *id.*; 11 C.F.R. § 300.63.

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1 funds in connection with their own state election.³² The provisions at 52 U.S.C. § 30125(e) and
2 11 C.F.R. § 110.3(d) are designed to prevent the use of funds that are outside the limitations and
3 prohibitions of the Act in federal elections, and to ensure that all funds used in federal elections
4 are reported.³³

5 The Act prohibits corporations from making contributions to federal candidates or their
6 committees and corporate officers and directors from consenting to such contributions.³⁴ The
7 Act also prohibits federal candidates or their committees from knowingly accepting corporate
8 contributions.³⁵

9 **A. There is Reason to Believe that Respondents Violated 52 U.S.C.**
10 **§ 30125(e)(1)(A) and 11 C.F.R. § 110.3(d) in Connection with the State**
11 **Committee’s \$800 Transfer to the Federal Committee**

12 Here, Respondents concede, and both committees’ disclosure reports confirm, that the
13 Federal Committee accepted an \$800 transfer from the State Committee.³⁶ Accordingly, there is
14 reason to believe that Respondents violated 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d)
15 in connection with this contribution.

³² See AO 2005-02 at 2, 4 (Corzine); AO 2003-32 at 5 (Tenenbaum).

³³ F&LA at 4, MUR 7109 (Portantino).

³⁴ 52 U.S.C. § 30118(a).

³⁵ *Id.*

³⁶ Resp. at 3; see also Friends of Andrew Garbarino, 2020 July Periodic Report (July 17, 2020), <https://publicreporting.elections.ny.gov/CandidateCommitteeDisclosure/CandidateCommitteeDisclosure> (search within “Candidate/Committee Disclosures” for “Andrew Garbarino”); Garbarino for Congress, 2020 April Quarterly Report at 34 (Apr. 15, 2020), <https://docquery.fec.gov/pdf/379/202004159216948379/202004159216948379.pdf> (showing Federal Committee’s receipt).

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1 **B. There is Reason to Believe that Garbarino and the State Committee Violated**
2 **52 U.S.C. § 30125(e)(1)(B) by Receiving and Spending Nonfederal Funds in**
3 **Connection with an Election to Nonfederal Office**

4 As discussed *supra*, as a matter of law, the State Committee was an entity controlled or
5 maintained by a federal candidate; therefore, Garbarino, a federal candidate, EFMC'd the State
6 Committee, and the State Committee was acting on behalf of Garbarino. Because Garbarino
7 EFMC'd the State Committee, any funds the State Committee solicited, received, directed,
8 transferred, or spent in connection with a federal election or state election after Garbarino
9 became a federal candidate were required to be federally permissible.³⁷ Moreover, the exception
10 under the Act allowing a simultaneous federal and state candidate to spend nonfederal funds
11 “solely in connection with such election for State or local office,” does not apply here since it
12 does not appear that Garbarino was a state candidate in 2020.³⁸ Although the Response claims
13 that Garbarino could have filed to be on the ballot for the State Assembly seat, there is no
14 evidence that he participated in the primary election for that office or campaigned for any state or
15 local office at the time of the receipts and expenditures at issue. Thus, he cannot take advantage
16 of this state candidate exception.

17 1. The State Committee's Receipt of Nonfederal Funds

18 The Response argues that the State Committee's fundraising is “subject to state and local
19 laws, not the [Act].”³⁹ That argument is incorrect. The Act states that an entity EFMC'd by a
20 federal candidate or federal officeholder is prohibited from “receiv[ing] . . . funds in connection
21 with any election other than an election to Federal office” unless the funds are subject to the

³⁷ F&LA at 4, MUR 6985 (Zeldin for Senate, *et al.*).

³⁸ See 52 U.S.C. § 30125(e)(2); 11 C.F.R. § 300.63; F&LA at 4 n.13, MUR 6985 (Zeldin for Senate, *et al.*).
(finding that a state officeholder who was not seeking a state office could not take advantage of the exception).

³⁹ Resp. at 3.

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1 limitations and source prohibitions of the Act.⁴⁰ The Commission has enforced this prohibition
2 against entities EFMC'd by federal candidates, including against a state committee of a federal
3 candidate/officeholder.⁴¹

4 Here, the State Committee was EFMC'd by Garbarino and its disclosure reports show
5 that it accepted \$2,550 in contributions from corporations, a prohibited source, after Garbarino
6 filed his statement of candidacy.⁴² Accordingly, there is reason to believe that Garbarino and the
7 State Committee violated 52 U.S.C. § 30125(e)(1)(B) by receiving funds in connection with an
8 election other than an election for federal office that were not subject to the Act's source
9 prohibitions.

10 2. The State Committee's Spending of Nonfederal Funds

11 Notwithstanding the prohibitions of 52 U.S.C. § 30125(e), the Commission has allowed a
12 state officeholder and federal candidate to donate federally permissible funds in a state account
13 to other state and local political committees if the state committee uses a "reasonable accounting
14 method" to separate permissible from impermissible funds (*i.e.*, those raised consistent with state
15 law but outside the Act's contribution limitations and source prohibitions), and it makes the

⁴⁰ 52 U.S.C. § 30125(e)(1)(B).

⁴¹ See F&LA at 5, MUR 6985 (Zeldin for Senate, *et al.*) (reason to believe where state campaign committee of federal candidate/officeholder accepted corporate contributions after individual became a federal candidate and was no longer a state candidate); see also F&LA at 7, MUR 6957 (Isadore Hall III, *et al.*) (reason to believe where ballot measure committee EFMC'd by federal candidate accepted corporate contributions after individual became a federal candidate). Cf. F&LA at 12, MUR 6820 (Carter) (Commission dismissed based on prosecutorial discretion allegation that candidate's state committee accepted \$3,250 in corporate contributions after he became a federal candidate; the federal candidate was a concurrent state candidate at the time, which would have necessitated investigating whether contributions were in connection with his state election.). The "state candidate" exception to 52 U.S.C. § 30125(e)(1)(B) that permits concurrent state and federal candidates to receive and spend nonfederal funds "solely in connection with *such* election for State or local office," does not apply by its terms to a non-state candidate. See 52 U.S.C. § 30125(e)(2); 11 C.F.R. § 300.63 (emphasis added).

⁴² See Attach. 1 (compilation of contributions received by Friends of Andrew Garbarino reported to New York State Board of Elections). The Complaint also includes a \$1,000 contribution from LawPAC in its total amount of \$3,550. See Compl. at 4.

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1 contributions with the permissible funds.⁴³ Moreover, the restrictions of 52 U.S.C. § 30125(e)
2 related to the spending of nonfederal funds only apply to activity that is in connection with any
3 election. New York state law permits campaign funds to be used to defray expenses related to
4 “the holding of public office or party position.”⁴⁴ Such state officeholder expenses and
5 administrative costs of maintaining a state committee would not fall under the 52 U.S.C.
6 § 30125(e) restrictions if they are unrelated to any election.⁴⁵ Thus, if the State Committee used
7 a reasonable accounting method to identify federally permissible funds, it would be permissible
8 for the State Committee to use those funds for nonfederal campaign contributions made after
9 Garbarino became a federal candidate. The State Committee could also use nonfederal funds in
10 its account for disbursements related to Garbarino’s official duties as a sitting member of the
11 New York State Assembly, since those disbursements are not related to any election.⁴⁶

12 Here, the State Committee’s disbursements to state and local candidates and committees
13 after Garbarino became a federal candidate appear to have violated the Act. The State
14 Committee reported giving \$19,300 from January 12, 2020, through September 28, 2020, to state
15 and local candidates and committees as “political contribution[s].”⁴⁷ Therefore, these
16 contributions do not appear to be for the purpose of defraying expenses related to Garbarino’s
17 holding of public office or party position. Similarly, there is nothing in the record that indicates
18 that the State Committee’s three payments to the Republican Assembly Campaign Committee

⁴³ AO 2007-26 at 3-5 (Schock); AO 2005-38 at 4 (Casey).

⁴⁴ MCKINNEY’S CONSOL. LAWS OF N.Y. ANN. Chapter 17 § 14-130.

⁴⁵ F&LA at 10, MUR 7246 (Buddy Carter for Congress, *et al.*) (citing AO 2016-25 (Mike Pence for Indiana), AO 2009-26 (State Representative Coulson), AO 2004-14 (Davis), and AO 2003-20 (Reyes)).

⁴⁶ *Id.* (citing AO 2009-26 at 5 (concluding that soft money rules do not restrict state committee’s disbursements for state legislative activity)).

⁴⁷ *See* Attach. 2.

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1 totaling \$10,250 and two payments to the “SC GOP” totaling \$1,500 (reported as “transfers out”)
2 were related to Garbarino’s holding of public office or party position.⁴⁸ Instead, the \$31,250
3 combined total that the State Committee reported as “political contributions” and “transfers out”
4 appears to qualify as being transferred, spent, or disbursed in connection with nonfederal
5 elections.⁴⁹

6 The State Committee received a total of \$137,276 from July 2017 (the beginning of New
7 York’s 2018 January Periodic reporting period) to November 3, 2020 (Election Day).⁵⁰ Of that
8 total, \$32,426 (23.68%) came from individuals, \$5,075 (3.7%) came from partnerships, \$2,775
9 (2%) were unitemized, \$25,175 (18.38%) came from corporations, \$4,250 (3.1%) came from
10 “other,” \$53,925 (39.38%) came from PACs, \$1,075 (.07%) came from political committees, and
11 \$12,225 (8.9%) came from LLCs.⁵¹ While theoretically possible, given the makeup of
12 contributions received over the previous two and half years, it appears unlikely that the \$31,250
13 given to state and local candidates and committees was comprised of only federally permissible
14 funds. The State Committee had not received an itemized individual contribution since July 1,
15 2019.⁵² Instead, the overwhelming majority of the State Committee’s receipts since July 1, 2019

⁴⁸ See About Us, New York State Republican Assembly Campaign Committee (last visited Mar. 17, 2023), <http://www.nyracc.com/about> (“[NYSRACC] is a political committee devoted to increasing the Republican delegation in the New York State Assembly”). We believe “SC GOP” stands for “Suffolk County GOP.”

⁴⁹ See F&LA at 4, MUR 6985 (Zeldin for Senate, *et al.*) (donations by state committee of a federal candidate and New York state senator to state and local candidates and parties constitutes “transferring, spending, or disbursing funds in connection with a nonfederal election”). We calculated the amount in violation to include the State Committee’s \$300 contribution to the East End Republican Club and \$250 contribution to the Suffolk County Young Republicans. This accounts for the difference between the \$31,250 included in this F&LA and the Complaint’s alleged amount in violation of \$30,700.

⁵⁰ Attach. 1.

⁵¹ *Id.*

⁵² *Id.*

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1 were from state PACs, state political committees, LLCs, and corporations.⁵³ And following
2 Garbarino’s filing a Statement of Candidacy on December 6, 2019, the majority of the State
3 Committee’s receipts were contributions from corporations.⁵⁴

4 The Response does not address this alleged violation. As a result, we do not have
5 information that the State Committee used a “reasonable accounting method” and used only
6 federally permissible funds to make the contributions at issue. Moreover, the fact that the State
7 Committee admittedly transferred \$800 in funds to the Federal Committee in violation of
8 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d) suggests that the State Committee did not
9 have sufficient safeguards to ensure only federally permissible funds were contributed to state
10 and local candidates following Garbarino’s federal candidacy.

11 Accordingly, there is reason to believe that Garbarino and the State Committee violated
12 52 U.S.C. § 30125(e)(1)(B) by receiving and spending funds in connection with a nonfederal
13 election from sources prohibited by the Act.⁵⁵

14 **C. There is Reason to Believe that Garbarino and the State Committee Violated**
15 **52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d) by Spending Nonfederal**
16 **Funds in Connection with an Election to Federal Office**

17 Because the State Committee accepted contributions from corporations and none of the
18 State Committee’s funds were subject to the Act’s reporting provisions as required by 52 U.S.C.
19 § 30125(e)(1)(A), if the State Committee paid for Garbarino’s federal campaign expenses,

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ See F&LA at 5-6, MURs 7106 & 7108 (Citizens for Maria Chappelle-Nadal, *et al.*) (reason to believe where federal candidate’s state committee contributed to state and local candidates without demonstrating it had sufficient federal funds using a reasonable accounting method); F&LA at 5, MUR 6985 (Zeldin for Senate, *et al.*) (reason to believe where there was no indication that federal candidate’s state committee donated to state and local parties using a reasonable accounting method to ensure such donations consisted of federally permissible funds).

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1 Garbarino and the State Committee would have spent nonfederal funds in connection with a
2 federal election in violation of 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d).⁵⁶

3 Here, the Complaint argues that the State Committee’s expenditures for “campaign
4 consultant,” “campaign literature,” “fundraising,” and “print ads” (totaling \$10,622.50) must
5 have been in support of Garbarino’s federal candidacy because Garbarino was not
6 simultaneously a candidate for state office.⁵⁷ The Complaint also claims that the State
7 Committee’s expenditures to CCC Enterprises must have been in support of Garbarino’s federal
8 candidacy because it was simultaneously providing services to the Federal Committee.⁵⁸ For its
9 part, the Response asserts that the Complaint’s allegations do not meet the Commission’s
10 “reason to believe standard.”⁵⁹

11 A “reason to believe” finding that a person has committed a violation of the Act is a
12 “threshold determination”⁶⁰ that an investigation *may* demonstrate liability.⁶¹ It is the lowest
13 evidentiary standard in the Act’s framework for administrative enforcement; lower than
14 “probable cause to believe” and lower than “reasonable cause to believe,” which, prior to 1980,

⁵⁶ See F&LA at 4, MUR 7109 (Portantino); F&LA at 11, MUR 6447 (Steele for Maryland) (reason to believe where candidate’s state campaign committee paid bills of candidate’s federal committee); MUR 6267 (Paton) (reason to believe where candidate’s state campaign committee paid candidate’s federal committee’s polling and survey costs); F&LA at 3, MUR 6219 (Kuhl for Congress) (reason to believe state campaign committee of New York State Senator violated 52 U.S.C. § 30125(e)(1)(A) by paying for his federal campaign expenses); MUR 5480 (Levetan) (reason to believe where a state lawmaker and her state and federal used funds from the state committee’s nonfederal account to pay for polling expenditures that directly benefited her federal campaign); MUR 5426 (Schultz) (reason to believe where a state senator directed that funds and assets from his state committee be used to pay for expenses related to his federal election campaign).

⁵⁷ Compl. at 1-4, 7.

⁵⁸ *Id.* at 3-4, 7.

⁵⁹ See Resp. at 1-2.

⁶⁰ See, e.g., *CREW v. FEC*, 993 F.3d 880, 892 (D.C. Cir. 2021); *FEC v. Rose*, 806 F.2d 1081, 1091 (D.C. Cir. 1986).

⁶¹ See Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545 (Mar. 16, 2007) (“‘reason to believe’ findings indicate only that the Commission found sufficient legal justification to open an investigation to determine whether a violation of the Act has occurred.”)

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1 triggered the Act’s mandatory efforts at conciliation.⁶² As for the amount of evidence required,
2 one federal district court recently stated that a “credible allegation” is all that is needed “given
3 what a low bar the reason-to-believe standard represents.”⁶³ Other courts have stated that there
4 must be some minimal amount of evidence of a violation.⁶⁴ Under both views, which do not
5 necessarily conflict, proof of a violation is not necessary.⁶⁵ The Commission has stated that
6 reason to believe is appropriate when a complaint “credibly alleges that a significant violation

⁶² See ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW* 170 (2012) (“[w]here the document has used one term in one place, and a materially different term in another, the presumption is that the different term denotes a different idea”). “Reason to believe” was initially included as part of the Federal Election Campaign Act Amendments of 1974. Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, § 314, 88 Stat. 1263, 1284 (1974). The “reasonable cause to believe” and “probable cause to believe” provisions were added by the Federal Election Campaign Act Amendments of 1976, which significantly restructured the Act’s enforcement framework to require reason to believe to initiate an investigation, reasonable cause to believe to trigger a mandatory period to attempt conciliation following an investigation, and probable cause to believe in order to institute a civil action if conciliation failed. Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, § 313, 90 Stat. 475, 483-84 (1976). The “reasonable cause to believe” provision was later removed as part of the Federal Election Campaign Act Amendments of 1979, which also changed the trigger for mandatory conciliation to probable cause to believe. Federal Election Campaign Act Amendments of 1979, Pub. L. No. 96-187, § 309, 93 Stat. 1339, 1359 (1980).

⁶³ *Campaign Legal Center v. FEC*, No. 19-2336, 2022 WL 17496220 at *8 (D.D.C. Dec. 8, 2022).

⁶⁴ *Nat’l Right to Work Comm. v. FEC*, No. 86-0006 (D.D.C. Aug. 21, 1986) (“While not now indicating the precise dividing line, this Court recognizes that there is a vast middle ground between filing a complaint totally devoid of supporting evidence and hiring detectives to violate the Act in an effort to discover violations of the Act by others [the alleged activity].”); *Orloski v. FEC*, No. 83-3513 (D.D.C. Dec. 6, 1984) (“[T]he existence of a facially valid complaint is a powerful factor in favor of a decision to investigate, but it is not in itself dispositive.”), *aff’d*, 795 F.2d 156 (D.C. Cir. 1986); *In re FECA Litigation*, 474 F. Supp. 1044, 1047 (D.D.C. 1979) (“[E]ven when the complaints state a valid charge, they do so only in the most conclusory fashion. [The Plaintiff] offers not a scintilla of evidence to support his assertion.”); *Hampton v. FEC*, No. 76-1392 (D.D.C. April 15, 1977) (Commission decision to approve no reason to believe recommendation not arbitrary and capricious because factual allegations were “tenuous”), *aff’d*, *Hampton v. FEC*, 580 F.2d 701 (D.C. Cir. 1978) (unpublished table decision).

⁶⁵ See *DSCC v. FEC*, 745 F. Supp. 742, 746 (D.D.C. 1990) (quoting Commissioner Josefiak that “complaints certainly do not have to *prove* violations occurred, rendering investigation unnecessary”); *FEC v. Franklin*, 718 F. Supp. 1272, 1278 (E.D. Va. 1989) (“While the complaint does not present a complete factual and legal account of a violation of the [Act] by the unknown respondent, such an account is not required.”), *aff’d in part, vacated in part*, 902 F.2d 3 (4th Cir. 1989); *Spannaus v. FEC*, 641 F. Supp. 1520, 1525-29 (S.D.N.Y. 1986) (noting Commission opened investigation because facts indicated there “might” have been a violation, and analogizing such determination to the Federal Trade Commission’s “threshold determination[s] that further inquiry is warranted”), *aff’d*, 816 F.2d 670 (2d Cir. 1987) (unpublished table decision).

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1 may have occurred, but further investigation is required to determine whether a violation in fact
2 occurred and, if so, its exact scope.”⁶⁶

3 The question of whether there is reason to believe that the State Committee’s
4 expenditures for “campaign consultant,” “campaign literature,” “fundraising,” and “print ads”
5 may have been for Garbarino’s federal candidacy is a close call. On the one hand, previous
6 matters where the Commission found reason to believe that a federal candidate’s state campaign
7 committee paid for that candidate’s federal campaign expenses, involved a significantly stronger
8 record at the reason to believe stage with respect to the nature of the payments at issue. For
9 example, when the Commission found reason to believe in complaint-generated matters MURs
10 5426 (Schultz) and 6267 (Paton), the record in those matters included respondents’ admissions
11 that the state committee paid for the candidate’s federal campaign expenses.⁶⁷ In another matter,
12 the evidence was obtained as a result of an audit (MUR 6219 (Kuhl for Congress)).⁶⁸

13 Here, because the Federal Committee’s reported cash-on-hand at the time exceeded
14 \$300,000, it does not appear that the Federal Committee needed subsidization by the State
15 Committee.⁶⁹ Further, the Response attempts to clarify some of the State Committee’s purpose

⁶⁶ See Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545 (Mar. 16, 2007); see also Federal Election Commission Annual Report 2004 at 43 (“The statutory phrase ‘reason to believe’ is misleading and does a disservice to both the Commission and the respondent. It implies that the Commission has evaluated the evidence and concluded that the respondent has violated the Act. In fact, however, a ‘reason to believe’ finding simply means that, after evaluating the complaint, the respondents’ responses to the complaint (if an externally generated complaint), and information available on the public record, the Commission believes a violation may have occurred. However, the Commission has not yet established that a violation has, in fact, occurred. In order to evaluate the validity of the alleged facts, the Commission needs to investigate, i.e., to seek information, and responses to specific inquiries, from those involved in the alleged activities. It would therefore be helpful to substitute words that sound less accusatory and that more accurately reflect what, in fact, the Commission is doing at this early phase of enforcement.”).

⁶⁷ See F&LA at 1, MUR 6267 (Jonathan Paton, *et al.*); F&LA at 2, 4, MUR 5426 (Dale Schultz, *et al.*).

⁶⁸ See F&LA at 1, MUR 6219 (Kuhl for Congress).

⁶⁹ See Garbarino for Congress, 2020 April Quarterly Report at 2 (Apr. 15, 2020), <https://docquery.fec.gov/pdf/379/202004159216948379/202004159216948379.pdf> (disclosing ending cash on hand of \$321,537.64).

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1 descriptions for the expenditures at issue, arguing that some of the descriptions are
2 “misleading.”⁷⁰ The Response explains that the expenditure for “fundraising” was for an event
3 “without any solicitation component” and the expenditure for “[campaign] literature and
4 consultant also encompassed communications with . . . Garbarino’s constituents about his [state]
5 legislative accomplishments.”⁷¹ It also argues that Garbarino could make the expenditures at
6 issue to “retain his state seat in the event that he lost his federal primary.”⁷² Finally, the State
7 Committee had previously made payments to Land’s End for “fundraising” in 2018 and 2019,
8 which could suggest that the 2020 payments were related to Garbarino’s state office.⁷³

9 On the other hand, MURs 5426, 6219, and 6267 do not establish an evidentiary floor by
10 which no other set of facts could support reason to believe unless accompanied by an admission
11 or the results of Commission audit. Unlike MUR 5426 (Schultz), where the Commission
12 credited the candidate’s sworn affidavit in which he explained how certain of the state
13 committee’s payments (for polling data/voter lists and computer equipment) were not used by his
14 federal committee, there is no basis from which we can conclude, particularly in light of the State
15 Committee’s contemporaneous descriptions of purpose, that the payments were not in connection
16 with Garbarino’s federal candidacy.⁷⁴ The unsworn Response reaches legal conclusions about
17 the nature of the “fundraising” event (stating that there was no “solicitation component”) without

⁷⁰ Resp. at 2.

⁷¹ *Id.*

⁷² *Id.*

⁷³ See Attach. 2; First GCR at 5, MUR 5416 (Wayne Christian, *et al.*) (fact that candidate’s state committee had paid vendors before and after his federal candidacy suggested that the expenditures “were all related to his state office, which he continued to hold throughout th[e] time period”) & Cert. (Nov. 8, 2004) (finding no reason to believe).

⁷⁴ F&LA at 3, 5, MUR 5426 (Dale Schultz, *et al.*).

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1 providing additional details.⁷⁵ The Response is also equivocal in its explanation regarding the
2 State Committee’s payment for “campaign literature” and “campaign consultant,” noting that the
3 word “campaign” in those descriptions “*also encompassed*” communications with constituents
4 about his legislative accomplishments and does not indicate that these expenditures were actually
5 limited to only those types of communications.⁷⁶ Finally, the claim that Garbarino could make
6 the expenditures at issue to retain his state seat also appears inaccurate, given that dates for filing
7 designating petitions to run for New York State Assembly were March 17-20 and the
8 complained-of expenditures began in April.⁷⁷

9 We believe the record in this matter, on balance, supports finding reason to believe.
10 Given the contemporaneous campaign-related descriptions of the State Committee’s complained-
11 of expenses, the fact that Garbarino did *not* simultaneously run for state office, the State
12 Committee’s other soft money violations described above, and the Response’s incomplete
13 explanations regarding the complained-of expenditures, the record sufficiently indicates at this
14 preliminary stage that the State Committee’s expenditures for “campaign consultant,” “campaign
15 literature,” “fundraising,” and “print ads” may have been in connection with Garbarino’s federal

⁷⁵ *Id.* If “unwarranted legal conclusions from asserted facts . . . will not be accepted as true” when made by complainants, they equally should not be taken as true when made by respondents. Statement of Reasons, Comm’rs Mason, Smith, Sandstrom & Thomas. MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee, Inc.).

⁷⁶ Resp. at 2 (emphasis added). The Response does not address the Complaint’s allegations with respect to payment for “print ads.”

⁷⁷ *Id.*; 2020 Political Calendar at 2, New York Board of Elections, <https://www.elections.ny.gov/NYSBOE/law/2020PoliticalCalendar0608.pdf>. New York state law requires that “the designation of a candidate for party nomination at a primary election . . . shall be by designating petition. MCKINNEY’S CONSOL. LAWS OF N.Y. ANN. Chapter 17 § 6-118. It also requires primary elections where “more candidates are designated for the nomination of a party for an office to be filled by the voters of the entire state than there are vacancies.” *Id.* § 6-160. The lack of primary results for the Republican primary election for New York State Assembly District 7 suggests that the Republican candidate, Jarett Gandolfo, was unopposed. *See* Certified Results from the June 23, 2020 Primary Election, New York State Board of Elections, <https://www.elections.ny.gov/NYSBOE/elections/2020/Primary/CertifiedJune232020StatePrimaryResults.pdf> (not including Republican primary results for State Assembly District 7).

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1 candidacy.⁷⁸ Accordingly, there is reason to believe that Garbarino and, the State Committee
2 violated 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d) by spending nonfederal funds in
3 connection with a federal election.

4 **D. There is Reason to Believe that the Federal Committee Violated 52 U.S.C.**
5 **§ 30125(e)(1)(A) and 52 U.S.C. § 30104(b) By Receiving, and Failing to**
6 **Report, In-Kind Contributions from the State Committee in Connection with**
7 **an Election to Federal Office**

8 If the State Committee’s expenditures for “campaign consultant,” “campaign literature,”
9 “fundraising,” and “print ads” were in connection with Garbarino’s federal candidacy, the
10 Federal Committee would have received a prohibited in-kind contribution from the State
11 Committee.⁷⁹ However, the Federal Committee did not report receiving contributions from the
12 State Committee other than the \$800 transfer discussed above.

13 Because there is reason to believe that the complained-of State Committee expenditures
14 were made in connection with Garbarino’s federal candidacy, there is reason to believe that the
15 Federal Committee received an in-kind contribution from the State Committee in violation of
16 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d). Further, because the Federal Committee
17 did not report receiving contributions from the State Committee other than the \$800 contribution
18 there is also reason to believe that the Federal Committee violated 52 U.S.C. § 30104(b).

⁷⁸ See Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545 (Mar. 16, 2007) (“Commission ‘reason to believe’ findings have caused confusion in the past because they have been viewed as definitive determinations that a respondent violated the Act. In fact, ‘reason to believe’ findings indicate only that the Commission found sufficient legal justification to open an investigation to determine whether a violation of the Act has occurred.”).

⁷⁹ See F&LA at 11, MUR 6447 (Steele for Maryland) (“[I]f State Committee funds were used to pay federal campaign expenses, the Federal Committee would have received prohibited in-kind contributions from the State Committee in violation of [52 U.S.C. § 30125(e)(1)(A)] and 11 C.F.R. § 110.3(d)”).