



June 16, 2023

**Via email at [cela@fec.gov](mailto:cela@fec.gov)**

Wanda Brown  
Acting Assistant General Counsel  
Complaints Examination & Legal Administration  
Federal Election Commission  
1050 First Street, NE  
Washington, D.C. 20463

**RE: MUR 8133 – Response of Mario Fratto for Congress and Thomas Datwyler in his official capacity as treasurer**

Dear Ms. Brown,

We represent Mario Fratto for Congress and Thomas Datwyler in his official capacity as treasurer (the “Committee”), and we write in response to your letter regarding the Complaint filed in the above-listed matter. The Complaint alleges, without any evidentiary support, that the Committee violated the Federal Campaign Act of 1971, as amended (the “Act”), by failing to report spending on various digital campaign advertisements. These speculative allegations are without merit, however, and the facts show that the Committee did not fail to report any spending because there was no spending to report. Accordingly, the Commission should find no reason to believe a violation occurred and dismiss the matter.

**I. Factual Background**

Mario Fratto was a 2022 congressional candidate for New York’s 24<sup>th</sup> District who finished second in the Republican primary election. During the campaign, like many candidates, Mr. Fratto used his personal Facebook account for campaign activity. To ensure compliance with the Commission’s and Facebooks separate disclaimer regimes, Mr. Fratto changed his Facebook account name to “Mario Fratto for Congress.” Mr. Fratto is not currently a candidate for the 2024 cycle and has not raised or spent over the threshold amount that would trigger filing a statement of candidacy.

According to the Complaint, “[r]ight before the 2022 primary election, the Buffalo Chronicle posted a vicious, false and defamatory article about Fratto’s opponent,” Representative Claudia Tenney, to its website.<sup>1</sup> Again, according to the Complaint, appearing next to the Tenney article on the Buffalo Chronicle’s website were several campaign logos for various New York state and federal candidates, including the Committee’s logo.<sup>2</sup> The Committee, however, did not pay for or request that its logo be advertised on the Buffalo Chronicle website, and in fact, because of the nature of the Tenney article, the

---

<sup>1</sup> Comp. at 1.

<sup>2</sup> *Id.*

Response of Mario Fratto for Congress

MUR 8133

Page 2

Committee requested that the logo be removed. It appears that at some point since then, the full page and article were removed from the website.

After his election, Mr. Fratto has continued to be politically engaged, and he often pays to promote his posts on social media. These promoted posts, however, are not related to any campaign activity and are not paid for with campaign funds. Instead, they are of a general political nature and are paid with Mr. Fratto's personal funds. According to the Meta/Facebook Ad Library, in 2023 Mr. Fratto has paid to promote eight of his posts a total of twelve times.<sup>3</sup> Each of these promoted posts cost less than \$100.<sup>4</sup> Mr. Fratto has requested to Facebook that his account be reversed back to its original state to exclude any reference to the Committee, but Facebook's account verification process is not proceeding in a timely manner.

## **II. Legal Analysis**

The Act and Commission regulations require political committees to report the name and address of each person to whom they make expenditures or other disbursements aggregating more than \$200 per calendar year, or per election cycle for authorized committees, as well as the date, amount, and purpose of such payments.<sup>5</sup> When candidates use their personal funds for campaign purposes, they are making contributions to their campaigns. Candidate expenditures on behalf of their own campaigns are not subject to any limits, but they must still be reported.<sup>6</sup>

An uncompensated individual or group of individuals may engage in Internet activities for the purpose of influencing a federal election without restriction. Such activity does not result in a "contribution" or an "expenditure" under the Act and does not trigger any registration or reporting requirements with the Commission.<sup>7</sup> Possible Internet activities include, but are not limited to, sending or forwarding electronic mail, providing a hyperlink to a website, or creating, maintaining, or hosting a website.<sup>8</sup>

## **III. Discussion**

The allegation that the Committee made unreported expenditures to further Mr. Fratto's candidacy is incorrect. Instead, the ads in question, which are publicly available, were paid with Mr. Fratto's personal funds and were unrelated to his past candidacy or theoretical future candidacy. Although, Mr. Fratto was permitted to make unlimited advertising expenditures on behalf of his campaign, the personal expenditures here were, again, unrelated to his candidacy and thus need not be reported by the Committee. Accordingly, there is no violation for failing to report expenditures for the Facebook ads.<sup>9</sup>

---

<sup>3</sup> See

[https://www.facebook.com/ads/library/?active\\_status=all&ad\\_type=all&country=US&view\\_all\\_page\\_id=104706852111927&sort\\_data\[direction\]=desc&sort\\_data\[mode\]=relevancy\\_monthly\\_grouped&search\\_type=page&media\\_type=all](https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&view_all_page_id=104706852111927&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped&search_type=page&media_type=all)

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

<sup>5</sup> 52 U.S.C. § 30104(b)(5), (6); 11 C.F.R. § 104.3(b)(4)(i), (vi).

<sup>6</sup> 11 C.F.R. § 110.10

<sup>7</sup> *Id.* §§ 100.94, 100.155.

<sup>8</sup> *Id.* § 100.94(b).

<sup>9</sup> Even if the Commission determines that the ads here were in furtherance of Mr. Fratto's candidacy, the violation would be a failure to report a contribution from a candidate to his own campaign for approximately \$1,000. A

Response of Mario Fratto for Congress

MUR 8133

Page 3

As to the alleged unreported advertising on the Buffalo Chronicle website, as discussed, the Committee never requested this advertising, and, in fact, asked for it to be removed because it did not wish to be associated with the allegedly “defamatory” article. Because the Committee did not make any expenditures to the Buffalo Chronicle, there were no expenditures to report. This type of activity likely falls under the Commission’s uncompensated Internet exception, and as such is not regulated.<sup>10</sup>

For the forgoing reasons, we respectfully request that the Commission find no reason to believe a violation occurred and dismiss the matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'DHR', is positioned above the typed name of the sender.

Derek H. Ross  
Senior Counsel  
Compass Legal Group

---

violation this insignificant would not be worth the use of Commission time and resources to pursue, and they are routinely dismissed pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985).

<sup>10</sup> Even if the Buffalo Chronicle’s activity was coordinated with the Commission, which is not alleged in the Complaint, it would not be a “coordinated communication” under the Act and Commission regulations because uncompensated Internet activity is not a “public communication” under the Commission’s three-pronged coordination test. *See* 11 C.F.R. § 100.26.