

BEFORE THE FEDERAL ELECTION COMMISSION

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Mario Fratto

Geneva NY 14456

Mario Fratto For Congress

P.O. Box 44

Geneva, NY 14456

tcdatwyler@gmail.com

Thomas Datwyler

PO Box 183

Hudson, Wisconsin 54016

tcdatwyler@gmail.com

v.

MUR No.

8133

2023 JUL -5 AM 10: 25

OFFICE OF
GENERAL COUNSEL

STEPHEN A. BARNHOORN

Honeoye, NY 14471

AMENDMENT

COMPLAINT

This Complaint is filed in accordance with 52 U.S.C. § 30109(a)(1) against Mario Fratto, Mario Fratto for Congress, and Thomas Datwyler (the “Respondents”) for violations of the Federal Election Campaign Act (“FECA”) and the Federal Election Commission’s (“FEC” or “Commission”) regulations. Specifically, it appears the Respondents violated the law by accepting and spending approximately \$29,600 of General Election funds despite Mario Fratto not qualifying for the General Election.

The standard for an FEC investigation is, “[i]f the Commission, upon receiving a complaint... has reason to believe that a person has committed, or is about to commit, a violation of [FECA]... [t]he Commission shall make an investigation of such alleged violation...”¹ This Complaint clearly meets this standard. The Commission should find reason to believe and take proper action.

Background

Mario Fratto was a congressional candidate for U.S. House District 24 in the 2022 primary election. His authorized principal campaign committee was Mario Fratto for Congress. The Treasurer for his committee is Thomas Datwyler. Mario Fratto was defeated in the primary election and was not a candidate in the general election.

For the 2022 election cycle, a candidate for federal elections could receive \$2,900 per election. In an election cycle, the primary and general elections are considered separate elections. It was permissible for a candidate to raise \$2,900 for the primary election and \$2,900 for the

¹ 52 U.S.C. § 30109(a)(2); see also 11 C.F.R. § 111.4(a)

general election.² While a candidate could accept contributions for the general election, FECA and Commission's regulations require the campaign must employ an acceptable accounting method to distinguish between primary and general election contributions.³ General election contributions cannot be used in the primary election, and if a candidate does not qualify for the general election, contributions are per se excessive and must be refunded to the contributor, redesignated, or reattributed within 60 days of the primary.⁴

Based on the FEC reports for Mario Fratto for Congress, it appears respondents failed to meet their obligations to refund, redesignate, or reattribute contributions that exceeded \$2,900.

According to the Respondents' FEC Reports, eleven individuals contributed more than \$2,900.⁵

<u>Name</u>	<u>Address</u>	<u>City</u>	<u>State</u>	<u>2021-2022 Total Contributions</u>	<u>Excessive Amount</u>
FRATTO, SCOTT M	PO BOX 291	WATERLOO	NY	\$5,500	\$2,600
FRATTO, BRITTANY	1058 STATE ROUTE SAND 20	GENEVA	NY	\$5,800	\$2,900
FRATTO, FRANK	1058 STATE ROUTE SAND 20	GENEVA	NY	\$5,800	\$2,900
FRATTO, SALLY ANN	964 COUNTY RD 4	GENEVA	NY	\$5,800	\$2,900
MASSA, NICHOLAS P	630 PRE EMPTON RD	GENEVA	NY	\$5,800	\$2,900
FRATTO, RALPH	924 COUNTY RD 4	GENEVA	NY	\$5,800	\$2,900
KLINGENSTEIN, THOMAS	580 WEST END AVENUE 3, 3	NEW YORK	NY	\$5,800	\$2,900
MAHER, MARIAH	95 RIDGWOOD DRIVE	GENEVA	NY	\$5,800	\$2,900
PITIFER, NOAH	33 NAGEL PL	GENEVA	NY	\$5,800	\$2,900
WILLIAMS, JANET	2294 EDWARDS RD	WATERLOO	NY	\$5,800	\$2,900

² 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(a)-(b); *see also* Archive of contribution limits, (<https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/archived-contribution-limits/>).

³ 11 C.F.R. § 102.9(e).

⁴ *Id.*

⁵ Mario Fratto For Congress, Contributions

(https://www.fec.gov/data/receipts/?committee_id=C00800045&two_year_transaction_period=2022&data_type=processed).

According to the Respondents' FEC Reports, the campaign committee has only refunded Mario Fratto, one of the individuals listed above who exceeded the \$2,900 contribution limit (but only refunded the contributor \$2,000), and three other individuals.⁶

<u>Name</u>	<u>State</u>	<u>Disbursement Discription</u>	<u>Disbursement Date</u>	<u>Disbursement Amount</u>
TAPSCOTT, CAROL J	NY	CONTRIBUTION REFUND	10/11/2022	\$2,900
TAPSCOTT, WILLIAM C	NY	CONTRIBUTION REFUND	10/12/2022	\$2,900
WILSON, GINA	NY	CONTRIBUTION REFUND	10/7/2022	\$5,800
FRATTO, MARIO	NY	REFUND OF CONTRIBUTIONS	6/30/2022	\$5,800
PITIFER, ANN M	NY	CONTRIBUTION REFUND	1/11/2023	\$2,000

According to the Respondents' most recent FEC report, the campaign committee only has \$7,835.54 cash on hand and has \$50,000 in debt.⁷

Based on these FEC reports, the excessive funds appear to be approximately \$29,600. Based on the limited amount of cash on hand, the Respondents have likely spent the excessive contributions.

Analysis

Based on the Respondent's FEC reports and because Mario Fratto was defeated in the primary, it appears the Respondents violated the law by failing to refund, redesignate, or reattribute the approximately \$29,600 in excessive contributions within 60 days of the primary election.⁸ Likewise, it appears the Respondents accepted excessive campaign contributions by not appropriately refunding, redesignating, or reattributing these contributions in violation of FECA and Commission regulations.⁹ It also appears they knowingly expended general election funds that should have been refunded, redesignated, or reattributed in violation of FECA and Commission regulations. *Id.* Based on the Respondent's FEC reports, it also appears they violated 11 C.F.R. § 102.9(e) by failing to employ an acceptable accounting method to distinguish between primary and general election contributions

Prayer For Relief

⁶ Mario Fratto For Congress, Disbursements

(https://www.fec.gov/data/disbursements/?committee_id=C00800045&two_year_transaction_period=2022&data_type=processed).

⁷ Mario Fratto for Congress, April Quarterly 2023

(<https://docquery.fec.gov/pdf/193/202304069579727193/202304069579727193.pdf>)

⁸ 52 U.S.C. 30116(a)(1); 11 C.F.R. § 110.1.

⁹ *Id.*; 11 C.F.R. § 103.3(b)(3).

Wherefore, the Commission should find reason to believe that Mario Fratto, Mario Fratto for Congress, and Thomas Dawtyler have violated FECA and Commission regulations and conduct an immediate investigation under 52 U.S.C. § 30109(a)(2). Further, the Commission should seek appropriate remedies and sanctions for any and all violations, appropriate civil penalties, and such additional remedies as are necessary and appropriate to ensure compliance with the FECA.

Thank you for your attention to this matter,
STEPHEN A. BARNHOORN

Honeoye, NY 14471

1

Signature: Stephen A. Barnhoorn

NOTARY: Geraldine H. Rogers

GERALDINE H. ROGERS
Notary Public, State of New York
Ontario County Reg. #01R06324409
Commission Expires 05/04/2027