

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

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3 **ENFORCEMENT PRIORITY SYSTEM**  
4 **DISMISSAL REPORT**

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6 **MUR:** 8133

**Respondent:** Mario Fratto for Congress and  
Thomas Datwyler in his  
official capacity as treasurer

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10 **Complaint Receipt Dates:** May 1, 2023; July 5, 2023 (Supp. Compl.)

11 **Response Receipt Dates:** June 16, 2023; July 27, 2023 (Supp. Resp.)

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15 **Alleged Statutory/  
16 Regulatory Violations:**

52 U.S.C. §§ 30104(b), 30116(f)

17 11 C.F.R. §§ 102.9(e), 104.3(b), 110.9

18 The Complaint alleges that Mario Fratto for Congress and Thomas Datwyler in his official  
19 capacity as treasurer (the “Committee”), the principal campaign committee<sup>1</sup> of Mario Fratto, a 2022  
20 candidate in New York’s 24th Congressional District,<sup>2</sup> failed to disclose disbursements totaling less  
21 than or equal to \$1,199.88 for 12 digital advertisements on Facebook and digital advertisements of  
22 an unknown number and cost on a website with the name “The Buffalo Chronicle” and knowingly  
23 accepted \$29,600 in excessive contributions from individuals, in violation of the Federal Election  
24 Campaign Act of 1971, as amended (the “Act”).<sup>3</sup> The Complaint states that Facebook’s Ad Library  
25 contains 12 advertisements placed by the account “Mario Fratto for Congress” between January 7,  
26 2023, and March 28, 2023, which promote Fratto’s “future candidacy” and “attack the incumbent

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<sup>1</sup> Mario Fratto for Congress, Amended Statement of Organization (Feb. 21, 2024), <https://docquery.fec.gov/pdf/191/202402219622159191/202402219622159191.pdf>.

<sup>2</sup> Mario Fratto, Statement of Candidacy (Mar. 12, 2022), <https://docquery.fec.gov/pdf/783/20220312949377/1783/202203129493771783.pdf>.

<sup>3</sup> Compl. at 1 (May 1, 2023); Supp. Compl. at 4 (July 5, 2023). The Facebook Ad Library indicates an “amount spent” of less than \$100 for each of the 12 advertisements identified in the Complaint which equates to a total range of \$0.12 to \$1,199.88. *Mario Fratto for Congress*, META AD LIBRARY, [https://www.facebook.com/ads/library/?active\\_status=all&ad\\_type=political\\_and\\_issue\\_ads&country=US&view\\_all\\_page\\_id=104706852111927&sort\\_data\[direction\]=desc&sort\\_data\[mode\]=relevancy\\_monthly\\_grouped&start\\_date\[min\]=2023-01-07&start\\_date\[max\]=2023-03-29&search\\_type=page&media\\_type=all](https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&view_all_page_id=104706852111927&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped&start_date[min]=2023-01-07&start_date[max]=2023-03-29&search_type=page&media_type=all) (last visited Mar. 29, 2024).

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1 member of Congress.”<sup>4</sup> The Complaint goes on to allege that, before the 2022 primary election, the  
2 Committee placed advertisements on a satirical website with the title “The Buffalo Chronicle”  
3 including one attached to an article disparaging Fratto’s opponent and failed to disclose the costs of  
4 the advertisements as disbursements or in-kind contributions.<sup>5</sup> The Supplemental Complaint further  
5 alleges that the Committee knowingly accepted \$29,600 in excessive contributions from individuals  
6 by failing to refund, redesignate, or reattribute contributions designated for the general election after  
7 the candidate lost the 2022 primary election.<sup>6</sup>

8 Respondent states that the candidate, in his personal capacity and with his personal funds in  
9 2023 after the primary election had already occurred which he lost and when Fratto was no longer a  
10 federal candidate, paid Meta to promote eight Facebook posts 12 times, each time at a cost of less  
11 than \$100, and that the posts were “of a general political nature” and “not related to any campaign  
12 activity.”<sup>7</sup> Respondent states that due to a delay in Facebook changing the name on the candidate’s  
13 personal account from “Mario Fratto for Congress” back to his own name, the posts reference the  
14 Committee when, in fact, the Committee was not controlling the account.<sup>8</sup> Respondent also states  
15 that the use of the Committee’s logo on “The Buffalo Chronicle” was unauthorized and that the  
16 Committee requested that the logo be removed.<sup>9</sup> Respondent further states that the apparently

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<sup>4</sup> Compl. at 1. The Response states that “Mr. Fratto is not currently a candidate for the 2024 cycle.” The candidate filed a Statement of Candidacy for the 2024 cycle on Oct. 30, 2023. Mario Fratto, Statement of Candidacy (Oct. 30, 2023), <https://docquery.fec.gov/pdf/287/202310309598913287/202310309598913287.pdf>.

<sup>5</sup> Compl. at 1.

<sup>6</sup> Supp. Compl. at 4.

<sup>7</sup> Resp. at 2 (June 16, 2023). Respondent argues that even if the posts were found to be federal election activity, the total amount is less than \$1,000 and argues that dismissal is appropriate given the apparent low dollar amount at issue. *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 1-2.

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1 excessive individual contributions referenced in the Supplemental Complaint were either refunded,  
2 reattributed, or, where permissible, redesignated pursuant to Advisory Opinion 2022-08.<sup>10</sup>

3         According to the Committee’s disclosure reports, as amended on the date of the  
4 Supplemental Response, 338 days after the candidate lost the election, it disclosed eight  
5 contributions totaling \$23,200 from individuals who were referenced in the Supplemental  
6 Complaint with the memo “OTHER PRIMARY 8/23/2022,” apparently redesignating those  
7 contributions pursuant to Advisory Opinion 2022-08,<sup>11</sup> disclosed a refund of a \$2,900 contribution  
8 to another individual referenced in the Complaint 41 days after the candidate lost the election,<sup>12</sup> and  
9 reattributed a \$2,900 contribution from another individual referenced in the Complaint to another  
10 individual at the same mailing address with the same last name 338 days after the candidate lost the  
11 election.<sup>13</sup> Thus, out of the \$29,600 in allegedly excessive contributions identified by the  
12 Complaint, it appears that the full amount was refunded, redesignated, or reattributed between 41  
13 and 338 days after the candidate lost the election.

14         Based on its experience and expertise, the Commission has established an Enforcement  
15 Priority System using formal, pre-determined scoring criteria to allocate agency resources and  
16 assess whether particular matters warrant further administrative enforcement proceedings. These  
17 criteria include (1) the gravity of the alleged violation, taking into account both the type of activity

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<sup>10</sup> Supp. Resp. at 1-2 (July 27, 2023) (providing a table of refunds and reattributions). The table uses the word “reattributed” but appears to refer to redesignations.

<sup>11</sup> Mario Fratto for Congress, Amended 2022 April Quarterly Report at 32 (July 27, 2023), <https://docquery.fec.gov/pdf/322/202307279584093322/202307279584093322.pdf>; Mario Fratto for Congress, Amended 2022 July Quarterly Report at 6-8, 10-12 (July 27, 2023), <https://docquery.fec.gov/pdf/391/202307279584093391/202307279584093391.pdf>.

<sup>12</sup> Mario Fratto for Congress, Amended 2022 April Quarterly Report at 17 (July 27, 2023), <https://docquery.fec.gov/pdf/322/202307279584093322/202307279584093322.pdf>.

<sup>13</sup> Mario Fratto for Congress, Amended 2022 July Quarterly Report at 9 (July 27, 2023), <https://docquery.fec.gov/pdf/391/202307279584093391/202307279584093391.pdf>

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1 and the amount in violation; (2) the apparent impact the alleged violation may have had on the  
 2 electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in  
 3 potential violations and other developments in the law. This matter is rated as low priority for  
 4 Commission action after application of these pre-established criteria. Given that low rating and  
 5 apparent low dollar amount at issue we recommend that the Commission dismiss the Complaint,  
 6 consistent with the Commission's prosecutorial discretion to determine the proper ordering of its  
 7 priorities and use of agency resources.<sup>14</sup> We also recommend that the Commission close the file  
 8 effective 30 days from the date of certification of this vote (or on the next business day after the  
 9 30th day, if the 30th day falls on a weekend or holiday) and send the appropriate letters.

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 11 Lisa J. Stevenson  
 12 Acting General Counsel  
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 16 Charles Kitcher  
 17 Associate General Counsel  
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19  
 20 March 29, 2024

21 Date

22 BY:



23 Claudio J. Pavia  
 24 Deputy Associate General Counsel



25 Wanda D. Brown  
 26 Assistant General Counsel  
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28 Gordon King  
 29 Attorney  
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<sup>14</sup> *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).