

**BEFORE THE
FEDERAL ELECTION COMMISSION
MUR #8083**

RECEIVED
By OGC-CELA at 1:56 pm, Dec 20, 2022

Amanda Bogden
End Citizens United
PO Box 66005
Washington, DC 20035

Complainant,

v.

Thomas Patti
P.O. Box 730
Hilmar, CA 95324, and

Tom Patti for congress and Kelly Lawler, Treasurer
P.O. Box 730
Hilmar, CA 95324
kellylawler@thekalgroup.com

Respondents.

RESPONSE TO COMPLAINT

The complaint filed by Ms. Amanda Bogden for End Citizens United claims that there is compelling evidence pointing to violations of the Federal Election Campaign Act of 1971, as amended (the “Act”) and Federal Election Commission (the “FEC” or “Commission”) regulations. However, Ms. Bogden merely makes unsubstantiated allegations based off of conjecture and correlation—not fact and causation. The complaint attempts to detail three improper uses of nonfederal campaign funds by Tom Patti for Congress. Each of these alleged “improper uses” do not warrant investigation and are the result of simple mistakes and wild accusations by the complainant.

FACTUAL BACKGROUND

Thomas Patti was first elected to the San Joaquin County Board of Supervisors in 2016, won reelection in 2020, and is still a member of the Board of Supervisors today.¹ In April of 2021, Mr. Patti hired the Rosales Johnson Agency and Gateway Media (“Rosales” and “Gateway” respectively, “Rosales/Gateway” together) to help him engage with his county constituents through monthly e-newsletters and a social media presence which was paid for with funds from Tom Patti for Supervisor 2020 (the “nonfederal committee”).

Supervisor Patti began exploring the idea of running for federal office, established his Exploratory Committee in July of 2021, and hired the KAL Group (“KAL”) to act as the treasurer for the committee, and then eventually for Tom Patti for Congress (the “federal committee”). Supervisor Patti publicly announced his congressional campaign on November 16, 2021³ with a video produced by Gateway , and filed his statement of candidacy with the Commission on November 20, 2021.⁵

After the announcement video was created, Rosales/Gateway was hired by the federal committee as a campaign consultant and to produce campaign advertisements. At this time, Rosales/Gateway ceased working for the nonfederal committee to work only with the federal committee.⁷ As such, there was an overlap in billing to the nonfederal and federal committee, but

¹ <https://www.sjgov.org/department/bos/districts/district-3>

³ Twitter (Nov. 16, 2021), available at <https://twitter.com/SupeTomPatti/status/1460703788851859457>.

⁵ Tom Patti for Congress, Statement of Candidacy (Nov. 16, 2021), available at <https://docquery.fec.gov/cgi-bin/forms/C00792168/1548375/>.

⁷ *Id.*

the work done for each committee was billed separately and paid for by the respective committees.⁸

Also around this time, the nonfederal committee received a letter from the California Fair Political Practices Commission (“FPPC”) requiring his committee to file several amendments to previous campaign filings to include subvendor information. As the treasurer for the nonfederal committee was inexperienced with such amendments, KAL was hired to bring their expertise and experience to produce and file the amendments for the committee. KAL reviewed and amended 17 separate California campaign finance reports for the nonfederal committee and then ended all work for the nonfederal committee. This work was all billed and paid for separately.

As there was an overlap of work payments to KAL and Rosales/Gateway appear on FPPC and FEC reports at the same time. This does not by itself show any violations of FEC regulations or federal law. Correlation does not mean causation.

I. Respondents did not use nonfederal committee funds to pay for advertisements promoting Patti for Congress.

The advertisements on November 22 and 23, 2021, and on April 22 and 23, 2022, were not “transfers of funds” from the nonfederal committee to Tom Patti for Congress (the federal committee) but merely small errors that were quickly corrected. As such, they were not violations of 11 C.F.R. § 110.3(d) nor 52 U.S.C. § 30125(e)(1) as no money or resources from the nonfederal committee were utilized for federal campaign activities.

Per the response submitted to the Commission by Gateway Media/Rosales Johnson Agency, the November ad was mistakenly run with the disclaimer for the nonfederal

⁸ Id.

committee. The error was quickly discovered and removed within 24 hours. This ad was paid for purely with funds from the federal committee. Similarly, the ads on April 22 and 23, 2022, were paid for with funds from the federal committee, however, the disclaimer issue was a result of internal errors from Facebook.¹¹ The platform had mistakenly applied the incorrect disclaimer which was “an error on the part of Facebook because the ad in question was a boosted post; Facebook accidentally reverted to the default disclaimer within Tom Patti’s page rather than using the page disclaimer Gateway Media’s ad account currently had selected (Tom Patti’s congressional disclaimer).” Once the error was discovered, Gateway Media quickly had the platform correct the disclaimer. Gateway Media also had other advertisements running concurrently that all had the correct disclaimer of Tom Patti for Congress.¹²

As the above-mentioned advertisements were paid for by the federal committee, no transfer of funds from the nonfederal committee occurred. Having the wrong disclaimer on an advertisement does not a “transfer of funds” make. The advertisements were paid for by the federal committee and the disclaimer errors were swiftly corrected.

II. Some federal committee expenses were accidentally paid for by the nonfederal committee. The federal committee rectified the error upon discovery.

When a contribution is later discovered to be an illegal contribution, a committee treasurer has thirty days from discovery of the illegality to refund the contribution.¹³ Patti's nonfederal committee did inadvertently pay \$765.03 to Creative Vision Printing, \$934.80 to

¹¹ *Id.*

¹² *Id.*

¹³ 11 C.F.R. § 103.3(b)(2).

Marriot, and \$700 to Mastro's (for a total of \$2,399.83) and each reported payment did state that it was to "Reimburse from Tom Patti for Congress." However, this does not prove intentionality. These payments were made by mistake. The expenditures were initially made on Patti's credit card. The treasurer for the nonfederal committee paid the entire bill on the credit card without realizing that some of the charges were for the federal committee. On December 31, 2021, the federal committee discovered that the charges were paid for by the nonfederal committee and immediately issued a reimbursement. Since the illegal in-kind contributions were discovered on December 31 and reimbursed on the same day, the late discovered illegal contributions were properly returned and no violation of federal regulation occurred.

The in-kind contribution of \$500 for DJ services was only a data-input made error. The report has since been amended to show that no in-kind contribution was received by the nonfederal committee. As this in-kind was for a Patti for Congress event, the nonfederal committee did not receive a contribution. The inclusion of this in-kind on the report was merely a data-entry error that has since been remedied.

With the illegal contributions refunded and the data entry error amended, there are no violations of federal law or regulations. The illegal contributions were dealt with within the timeframe provided by 11 C.F.R. § 103.3(b)(2) and the in-kind contribution data-entry error was amended.

III. Payments to KAL, Rosales, and Gateway by the nonfederal committee were for work done specifically for the nonfederal committee.

Ms. Bogden's complaint makes wild accusations and assumptions about illegal spending based solely on conjecture and correlation. KAL, Rosales, and Gateway were all contracted with

both the federal and nonfederal committee. They did work for both committees and billed each committee separately for their services. It is not illegal to work for multiple committees as a consultant. If that were the case, no consultant or treasurer would be able to sustain a business.

KAL was originally hired to work as campaign treasurer for Patti for Congress in July of 2021. Patt's nonfederal committee received a letter from the FPPC requiring that the nonfederal committee amend several reports to include subvendor information. As Patti's nonfederal committee treasurer was inexperienced with filing such amendments and detailing subvendor reports, KAL was asked and hired to help with the amendments. KAL reviewed and amended 17 reports for the nonfederal committee and billed the nonfederal committee separately from the work KAL was doing as treasurer for the federal committee. After the amendments were complete, KAL continued to work solely on the federal committee.

Rosales and Gateway, two branches of one entity, were hired by the nonfederal committee to support Patti's communications as an officeholder in San Joaquin County. In April 2021, Rosales and Gateway were brought on to consult, produce monthly e-newsletters, and digitally advertise for Patti in his Supervisorial role. These officeholder expenses are allowed under California campaign finance laws and are common practice for elected officials to communicate with their constituents. Rosales and Gateway were later asked to assist Patti with his congressional campaign in November by creating his announcement video. Then in December of 2021, Rosales and Gateway were brought on full time as a consultant for the congressional campaign. Rosales and Gateway had some overlap of work with the nonfederal

and federal committee, but each was billed separately.¹⁷ All of the work done for the federal committee was paid for with funds from Patti for Congress.

Once again, the complaint's accusation that illegal spending was occurring was based off of unfounded accusations. Mr. Patti was concurrently an officeholder in San Joaquin County and running for Congress. Not being able to communicate with his constituents while also running for a congressional office would be a violation of his First Amendment rights. These accusations lack substance and should be dismissed.

CONCLUSION

The complaint attempts to cast Mr. Patti in the role of the unscrupulous politician. Mr. Patti's spending was not in violation of federal regulations. He hired an accountant and a consultant to engage in standard campaign practices. The work for each committee was done separately and billed appropriately. Minor errors were quickly fixed by all parties involved. As no violations of federal laws and regulations occurred, we request that the complaint be dismissed and this matter be closed.


¹⁷ Id.

VERIFICATION

I, KELLY LAWLER have read this Response to MUR 8083 and have personal knowledge of the contents stated therein and believe them to be true.

I declare under penalty of perjury and under the laws of the state of California that the foregoing is true and correct.

Executed on this 14 day of December 2022 in Hilmar, California.



KELLY LAWLER