

1 **FEDERAL ELECTION COMMISSION**

2
3 **FIRST GENERAL COUNSEL'S REPORT**

4
5 **MUR 8083**

6 DATE COMPLAINT FILED: Oct. 27, 2022

7 DATE OF NOTIFICATION: Nov. 1, 2022

8 DATE OF LAST RESPONSE: Dec. 20, 2022

9 DATE ACTIVATED: Mar. 29, 2023

10
11 EXPIRATION OF SOL: Nov. 22, 2026

12 ELECTION CYCLE: 2022

13
14 **COMPLAINANT:**

End Citizens United

15
16 **RESPONDENTS:**

Tom Patti for Congress and Kelly Lawler in her
official capacity as treasurer

Tom Patti for County Supervisor 2016 and Kimm
Lovelace in her official capacity as treasurer

Thomas Patti

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22 **RELEVANT STATUTE
AND REGULATIONS:**

52 U.S.C. § 30125(e)(1)

11 C.F.R. § 110.3(d)

11 C.F.R. § 103.3(b)(2)

23
24
25
26
27 **INTERNAL REPORTS CHECKED:**

Disclosure Reports

28
29 **FEDERAL AGENCIES CHECKED:**

None

30 **I. INTRODUCTION**

31 The Complaint alleges that Tom Patti for Congress and Kelly Lawler in her official
32 capacity as treasurer (“Patti for Congress”) received unlawful transfers from Tom Patti for
33 County Supervisor 2016 and Kimm Lovelace in her official capacity as treasurer (later renamed
34 “Tom Patti for County Supervisor 2020”) (herein, “Patti for Supervisor”) when Patti for
35 Supervisor used nonfederal funds for the apparent benefit of Patti for Congress in violation of

1 52 U.S.C. § 30125(e)(1) of the Federal Election Campaign Act of 1971, as amended (the “Act”)
2 and 11 C.F.R. § 110.3(d).

3 Specifically, the Complaint alleges that Patti for Supervisor paid for digital
4 advertisements; printing, travel, and website expenses; and other expenses on behalf of Patti for
5 Congress. In its Response, Patti for Congress denies any violations of the Act. The Response
6 states that: 1) Patti for Congress, rather than Patti for Supervisor, actually paid for the two
7 digital advertisements discussed in the Complaint, which are valued at approximately \$1,000,
8 and that these digital advertisements were mislabeled by a vendor as being sponsored by the
9 nonfederal committee; 2) although Patti for Supervisor’s disclosure reports indicated that it had
10 paid \$2,399.83 in candidate credit card charges that should have been paid by Patti for Congress,
11 the error was inadvertent and was remedied after being discovered, and although Patti for
12 Supervisor’s reports also appeared to disclose a \$500 in-kind contribution for services provided
13 in connection with a congressional campaign event, this disclosure was the result of an input
14 error; and 3) although Patti for Supervisor made payments to several common vendors also being
15 utilized by Patti for Congress, these payments were for nonfederal work that did not benefit the
16 congressional committee.

17 As discussed below, we recommend that the Commission find no reason to believe that
18 Respondents violated 52 U.S.C. § 30125(e)(1) in connection with the digital advertisements
19 described in the Complaint. We further recommend that the Commission exercise its
20 prosecutorial discretion and dismiss possible violations regarding \$2,399.83 in charges from the
21 candidate’s credit card for the congressional campaign’s printing, travel, and website expenses
22 that were initially paid by Patti for Supervisor and later reimbursed by Patti for Congress, as well
23 as possible violations regarding the reported \$500 in-kind contribution to Patti for Supervisor

1 concerning a congressional campaign event. Finally, we recommend that the Commission find
2 no reason to believe that the Respondents violated 52 U.S.C. § 30125(e)(1) in connection with
3 Patti for Supervisor's payments to common vendors for nonfederal work that did not benefit Patti
4 for Congress.

5 **II. FACTUAL BACKGROUND**

6 Thomas Patti, a member of the San Joaquin County Board of Supervisors, was a 2022
7 candidate to represent California's 9th Congressional District in the U.S. House of
8 Representatives.¹ Patti filed his Statement of Candidacy with the Commission on November 16,
9 2021.² Patti for Supervisor is Patti's nonfederal state campaign committee.³

10 The Complaint makes three distinct allegations, all of which concern alleged transfers
11 from Patti for Supervisor to Patti for Congress in violation of the soft money prohibitions at
12 52 U.S.C. § 30125(e)(1) and 11 C.F.R. § 110.3(d), and most of which involve simultaneous
13 relationships between the two committees and three of their campaign vendors: KAL Group
14 ("KAL"), Rosales Johnson Agency ("Rosales"), and Gateway Media ("Gateway").⁴ The
15 Commission received a Response from Patti for Congress.⁵

16 First, the Complaint alleges that Patti for Supervisor made an impermissible transfer to
17 Patti for Congress by paying for the placement of digital advertisements. In support of this

¹ *Patti, Thomas*, FEDERAL ELECTION COMM'N, https://www.fec.gov/data/candidate/H2CA09139/?cycle=2022&election_full=false (last visited June 26, 2023).

² Thomas Patti, Statement of Candidacy (Nov. 16, 2021).

³ Tom Patti for Congress Resp. ("Patti for Congress Resp.") at 2 (Dec. 20, 2022).

⁴ Compl. at 6-11 (Oct. 27, 2022).

⁵ Gateway, Rosales, and KAL were initially notified of the Complaint in this matter. Upon further review, the Office of General Counsel determined that those notifications were in error and the notification letters were rescinded. Gateway and Rosales nevertheless responded to the allegations in the Complaint on November 14, 2022, and portions of their response were incorporated into the Patti for Congress Response as "Exhibit A."

1 allegation, the Complaint provides data from Meta's Ad Library showing that digital
2 advertisements supporting Patti's congressional candidacy, which were run in November 2021
3 and April 2022 on Facebook and Instagram, were listed as being paid for by Patti for
4 Supervisor.⁶ An initial group of ads promoted a congressional campaign announcement video
5 that contained a "Paid for by Tom Patti for Congress" disclaimer.⁷ A search of Meta's Ad
6 Library reveals that a total of six ads matching this description were run in November 2021, and
7 these ads were estimated to cost between \$300 to \$498 in total.⁸ Another ad, run in April 2022,
8 invited viewers to attend a congressional campaign event, and cost between \$400 and \$499.⁹
9 The Complaint argues that, because Patti for Supervisor is reported to have paid for the
10 placement of these ads, they constituted an impermissible transfer to Patti for Congress.¹⁰

11 Patti for Congress's Response states that each of the Facebook and Instagram
12 advertisements discussed in the Complaint was actually paid for by Patti for Congress, and that
13 "no money or resources from the nonfederal committee were utilized for federal campaign
14 activities."¹¹ Patti for Congress also provided statements from its vendor explaining that the
15 November announcement video was inadvertently run on the Tom Patti for Supervisor account,
16 rather than the Tom Patti for Congress account, but that the error was immediately corrected, and

⁶ Compl. at 2-3.

⁷ *Id.*

⁸ *Meta Ad Library: Launched November 2021*, META, [https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&q=tom%20patti&sort_data\[direction\]=desc&sort_data\[mode\]=relevancy_monthly_grouped&start_date\[min\]=2021-11-01&start_date\[max\]=2021-12-01&search_type=keyword_unordered&media_type=all](https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&q=tom%20patti&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped&start_date[min]=2021-11-01&start_date[max]=2021-12-01&search_type=keyword_unordered&media_type=all) (last visited June 26, 2023) (navigate to "See summary details" for the two Tom Patti ads displayed).

⁹ Compl. at 3; *Meta Ad Library: Ad Details*, META, <https://www.facebook.com/ads/library/?id=1916966295156917> (last visited June 26, 2023).

¹⁰ Compl. at 6-7.

¹¹ Patti for Congress Resp. at 3, Ex. A at 1-2.

1 that the ad was paid for by Tom Patti for Congress, regardless of the page on which it ran.¹²
2 Both Patti for Congress and Patti for Supervisor reported making disbursements to Gateway in
3 their disclosure reports covering November 2021.¹³ Patti for Congress further states that the
4 April 2022 ad likewise appeared to bear the Patti for Supervisor disclaimer in error, and provides
5 statements from a vendor theorizing that this error was caused by Facebook's ad program
6 inadvertently reverting to an incorrect, previously used disclaimer, rather than using the Patti for
7 Congress disclaimer that the agency was using to run its other ads.¹⁴ The Response also notes
8 that this error was immediately corrected when discovered.¹⁵ Patti for Congress reported a
9 \$3,400 disbursement to Facebook as a subvendor of Gateway on its disclosure report covering
10 April 2022.¹⁶ Patti for Supervisor did not disclose any disbursements to Gateway or Facebook
11 on its disclosure report covering April 2022.¹⁷

12 Second, the Complaint alleges that Patti for Supervisor's report to the California Fair
13 Political Practices Commission ("FPPC") disclosed several impermissible advances, focusing
14 primarily on certain printing, travel, and website expenses that were later reimbursed by Patti for
15 Congress.¹⁸ Patti for Supervisor's FPPC report discloses a \$765.03 disbursement to Creative

¹² Patti for Congress Resp., Ex. A at 1-2.

¹³ Tom Patti for Congress, 2021 Year-End Report at 84 (Jan. 31, 2022), <https://docquery.fec.gov/pdf/017/202201319486151017/202201319486151017.pdf> (disclosing a November 2, 2021, disbursement to Gateway Media for \$11,000 and a November 16, 2021 disbursement to Gateway Media for \$6,000); Tom Patti for County Supervisor 2020, California Form 460, Jul.-Dec. 2021, CAL. FAIR POLITICAL PRACTICES COMM'N, at 15, 18 (Feb. 2, 2022) (showing disbursements to Facebook and Instagram, with Gateway as agent).

¹⁴ Patti for Congress Resp. at 3-4, Ex. A at 1-2.

¹⁵ *Id.*

¹⁶ Tom Patti for Congress, 2022 12-Day Pre-Primary Report at 51 (May 26, 2022), <https://docquery.fec.gov/pdf/133/202205269514457133/202205269514457133.pdf>.

¹⁷ Tom Patti for County Supervisor 2020, California Form 460, Jan.-June 2022, CAL. FAIR POLITICAL PRACTICES COMM'N (Aug. 1, 2022)

¹⁸ Compl. at 3-4.

1 Vision Printing, a \$934.80 disbursement to Marriott, and a \$700.00 disbursement to Mastro's, all
2 of which bear the reporting description "Reimburse from Tom Patti for Congress."¹⁹ On
3 December 31, 2021, apparently in response to these expenditures, Patti for Congress made a
4 \$2,422.84 disbursement to Patti for Supervisor, later reported with the description "Reimburse
5 Travel, Website and Printing."²⁰ The Complaint also alleges that Patti for Supervisor's
6 campaign finance filings showed what appeared to be a \$500 in-kind contribution of "Disc
7 Jockey Services for a Campaign Event," which the Complaint theorizes was for a federal
8 campaign event.²¹

9 The Patti for Congress Response states that Patti for Supervisor initially paid for some of
10 the federal campaign's printing, travel, and website expenses in error, but Patti for Congress
11 promptly addressed this by issuing a reimbursement to Patti for Supervisor upon discovery.²²
12 The Response states that these expenses were initially paid using "Patti's credit card," and that
13 the treasurer for Patti for Supervisor paid the entire credit card bill without realizing that some of
14 the charges were for federal campaigning.²³ The Response states that this error was discovered
15 on December 31, 2022, and that Patti for Congress promptly reimbursed Patti for Supervisor the
16 same day.²⁴ The Response further states that the inclusion of the alleged \$500 in-kind
17 contribution of DJ services on Patti for Supervisor's FPPC report was the result of a data input

¹⁹ Tom Patti for County Supervisor 2020, California Form 460, Jul.-Dec. 2021, CAL. FAIR POLITICAL PRACTICES COMM'N, at 14, 19 (Feb. 2, 2022).

²⁰ Tom Patti for Congress, 2021 Year-End Report at 90 (Jan. 31, 2022), <https://docquery.fec.gov/pdf/017/202201319486151017/202201319486151017.pdf>.

²¹ Compl. at 8.

²² Patti for Congress Resp. at 4-5.

²³ *Id.*

²⁴ *Id.*

1 error, that this in-kind contribution did not involve Patti for Supervisor, and that Patti for
2 Supervisor's FPPC reports have been amended to exclude this contribution.²⁵

3 Third, the Complaint draws a connection between payments made to the same vendors by
4 both Patti for Supervisor and Patti for Congress, which the Complaint suggests may indicate that
5 Patti for Supervisor paid for federal campaign activity with nonfederal funds.²⁶ The Complaint
6 alleges that, from January 1 to December 31, 2021, Patti for Supervisor paid \$3,971.25 to KAL
7 for accounting services, \$4,000 to Rosales for "information technology costs," and \$39,886.66 to
8 Gateway for "information technology costs."²⁷ The Complaint notes that Patti for Congress also
9 had a relationship with these vendors in the latter half of 2021 and into 2022; Patti for Congress
10 paid KAL \$8,306.04 for bookkeeping from August 26, 2021 to June 4, 2022, Rosales \$26,899.18
11 for consulting and fundraising services from December 22, 2021 to June 15, 2022, and Gateway
12 \$139,707.70 for digital and mailed advertisement services from December 31, 2021 to June 23,
13 2022.²⁸

14 Patti for Congress contends that the shared vendors worked on distinct projects and the
15 committees were billed appropriately. The Response states that each vendor billed each
16 committee separately for its respective services.²⁹ The Response also explains that KAL
17 reviewed and amended 17 reports for Patti for Supervisor in response to a letter from the FPPC,
18 in addition to working on federal matters for Patti for Congress.³⁰

²⁵ *Id.*

²⁶ Compl. at 4.

²⁷ *Id.*

²⁸ *Id.* at 4-5.

²⁹ Patti for Congress Resp. at 5-6.

³⁰ *Id.* at 6.

1 Similarly, the Patti for Congress Response states that all federal work done by Gateway
2 and Rosales was paid for by Patti for Congress.³¹ In its Response, Patti for Congress provides a
3 statement from Gateway and Rosales that Patti for Supervisor engaged the vendors beginning in
4 April 2021 to produce and consult on social media officeholder communications and a monthly
5 e-newsletter modeled on another California local official's officeholder newsletter, and that these
6 services included working with Patti's county staff to identify community events, county
7 services, and other information that Patti could share in these newsletters and digital
8 communications.³²

9 III. LEGAL ANALYSIS

10 A. Legal Standard

11 The Act prohibits federal candidates, officeholders, agents of such candidates or
12 officeholders, or "an entity directly or indirectly established, financed, maintained or controlled
13 by or acting on behalf of 1 or more candidates or individuals holding Federal office" from
14 soliciting, receiving, directing, transferring, or spending funds "in connection with an election for
15 Federal office . . . unless the funds are subject to the limitations, prohibitions, and reporting
16 requirements of [the] Act."³³

17 Further, the Commission's regulations prohibit "[t]ransfers of funds or assets from a
18 candidate's campaign committee or account for a nonfederal election to his or her principal
19 campaign committee or other authorized committee for a federal election."³⁴ The Commission

³¹ Patti for Congress Resp. at 7.

³² Patti for Congress Resp., Ex. A at 1.

³³ 52 U.S.C. § 30125(e)(1).

³⁴ 11 C.F.R. § 110.3(d).

1 has explained that this rule's blanket prohibition on all transfers from a candidate's nonfederal
2 committee to that candidate's federal committee is intended to prevent a federal committee's
3 indirect use of soft money.³⁵ The Commission has interpreted this prohibition to apply to in-kind
4 transfers of services from a nonfederal committee to a federal committee, such as the provision
5 of paid polling, fundraising data analysis, and staff work.³⁶

6 **B. The Commission Should Find No Reason to Believe that Respondents**
7 **Violated the Act in Connection with the Digital Advertisements**

8 The Complaint alleges that Patti for Supervisor made impermissible transfers to Patti for
9 Congress by paying for placement of two groups of digital advertisements promoting Patti's
10 congressional candidacy on Facebook and Instagram in November 2021 and April 2022.³⁷ The
11 Complaint relies on Meta's Ad Library, which shows that the subject advertisements were paid
12 for by Patti for Supervisor.³⁸ The Response states that these advertisements were paid for by
13 Patti for Congress, and that Facebook's disclaimer stating otherwise was the result of an error
14 relating to the labeling of earlier nonfederal advertisements paid for by Patti for Supervisor.³⁹

15 As discussed below, the available record supports Respondents' claims that Patti for
16 Congress paid for the congressional campaign's digital advertisements and that prior payments
17 for nonfederal digital advertisements by Patti for Supervisor may have led to the inadvertent use
18 of a Patti for Supervisor disclaimer on the congressional advertisements. Patti for Congress's
19 reports disclose a total of \$17,000 paid to Gateway in November 2021 for "Digital Advertising

³⁵ Transfers of Funds from State to Federal Campaigns, 58 Fed. Reg. 3474, 3475 (Jan. 8. 1993).

³⁶ *See, e.g.*, Certification ("Cert.") ¶ 2 (May 24, 2016), MUR 7076 (Richard Tisei).

³⁷ Compl. at 6-7.

³⁸ *Id.*

³⁹ Patti for Congress Resp. at 3-4, Ex. A at 1-2.

1 Production,” consistent with the Response’s claim that the November 2021 ad was paid for by
2 the congressional committee.⁴⁰ Patti for Congress’s reports show continued disbursements to
3 Gateway for digital advertising in 2022, and Patti for Congress began listing Facebook as a
4 subvendor of Gateway in May of 2022.⁴¹ Accordingly, it is plausible that Patti for Congress paid
5 for the advertisements identified in the Complaint.

6 Patti for Supervisor’s November 2021 payments to Gateway can be explained by a series
7 of contemporaneous officeholder communications, which were apparently unrelated to Patti’s
8 federal candidacy. On its July-December 2021 report to the FPPC, Patti for Supervisor disclosed
9 \$7,089.70 in payments to Facebook and \$2,000 in payments to Instagram, for a total of
10 \$9,089.70 in payments between both platforms.⁴² All of these payments were made through
11 Gateway.⁴³ Meta’s Ad Library shows several apparent officeholder communications made
12 between July and December 2021 across both Facebook and Instagram.⁴⁴ Meta provides only
13 rough ranges of costs for its ads, but we calculate that the officeholder communications run
14 during this six-month period may have cost upwards of \$7,000 in total. Additionally, Meta’s Ad
15 Library shows officeholder ads that Patti for Supervisor ran in June 2021 that may have cost
16 more than \$3,000 in total.⁴⁵ Some of these ads may be reflected on Patti for Supervisor’s July-

⁴⁰ Tom Patti for Congress, 2021 Year-End Report at 84 (Jan. 31, 2022),
<https://docquery.fec.gov/pdf/017/202201319486151017/202201319486151017.pdf>.

⁴¹ Tom Patti for Congress, 2022 12-Day Pre-Primary Report at 51 (May 26, 2022),
<https://docquery.fec.gov/pdf/133/202205269514457133/202205269514457133.pdf>.

⁴² Tom Patti for County Supervisor 2020, California Form 460, Jul.-Dec. 2021, CAL. FAIR POLITICAL
PRACTICES COMM’N, at 15, 18 (Feb. 2, 2022).

⁴³ *Id.*

⁴⁴ *Meta Ad Library: Launched June-December 2021*, META,
[https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&q=tom%20patti&sort_data\[direction\]=desc&sort_data\[mode\]=relevancy_monthly_grouped&start_date\[min\]=2021-06-01&start_date\[max\]=2022-01-01&search_type=keyword_unordered&media_type=all](https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&q=tom%20patti&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped&start_date[min]=2021-06-01&start_date[max]=2022-01-01&search_type=keyword_unordered&media_type=all) (last visited June 26, 2023).

⁴⁵ *Id.*

1 December 2021 report, depending on when the payments for these June communications were
2 made.⁴⁶ Thus, it is plausible that Patti for Supervisor's reported expenditures during this six-
3 month period were solely for San Joaquin officeholder communications, with Patti for Congress
4 paying for the November 2021 congressional campaign communication at issue.

5 Patti for Congress's assertion that it paid for the April 2022 advertisement is similarly
6 supported by the *lack* of relevant reported expenditures in Patti for Supervisor's 2022 report to
7 the FPPC. Patti for Supervisor's January-June 2022 report to the FPPC shows no payments to
8 Facebook or Instagram, consistent with Respondents' claim that the April 2022 advertisement
9 run during this period was paid for by Patti for Congress, rather than Patti for Supervisor.⁴⁷ The
10 apparent lack of digital advertising disbursements from Patti for Supervisor over the relevant
11 period, coupled with Patti for Congress's reported disbursements for digital advertisements
12 during that same period and Patti for Congress's representation that it paid for the April 2022
13 advertisement, support the conclusion that Patti for Congress paid for this advertisement.

14 Because Respondents have set forth a factual record demonstrating that Patti for
15 Congress, rather than Patti for Supervisor, paid for these digital advertisements, we recommend
16 that the Commission find no reason to believe that the placement of these advertisements
17 constituted an impermissible transfer from Patti for Supervisor to Patti for Congress in violation
18 of 52 U.S.C. § 30125(e)(1) and 11 C.F.R. § 110.3(d).

⁴⁶ *Id.* Meta ads are either prepaid or paid for through automatic billing. If ads are paid for through automatic billing, Meta automatically charges the advertiser's payment method when the advertiser spends over a certain amount, with additional amounts being charged monthly. *How Meta charges for ads*, META, https://www.facebook.com/business/help/716180208457684?id=1792465934137726&helpref=faq_content (last visited June 26, 2023). It is thus possible that ads run in June 2021 may have been charged and disclosed on Patti for Supervisor's July-December 2021 report.

⁴⁷ Tom Patti for County Supervisor 2020, California Form 460, Jan.-June 2022, CAL. FAIR POLITICAL PRACTICES COMM'N (Aug. 1, 2022).

1 **C. The Commission Should Dismiss the Complaint's Soft Money Allegations**
2 **with Respect to the Alleged Advance of Printing, Website, and Travel**
3 **Expenses and the Alleged In-Kind Contribution of DJ Services**

4 The Complaint alleges that Patti for Supervisor made payments totaling \$2,399.83 to
5 Creative Vision Printing, Marriott, and Mastro's that Patti for Congress later reimbursed, and
6 that these disbursements were impermissible transfers from Patti's nonfederal committee to his
7 federal committee in violation of 52 U.S.C. § 30125(e)(1) and 11 C.F.R. § 110.3(d).⁴⁸ Patti for
8 Congress's Response states that the candidate initially paid for these services using his credit
9 card, and that the nonfederal committee inadvertently reimbursed him for certain expenses that
10 should have been reimbursed by Patti for Congress. The Response states that Patti for Congress
11 took corrective action by promptly reimbursing Patti for Supervisor upon discovery of the
12 error.⁴⁹

13 Patti for Congress also argues that these payments should be treated as a contribution
14 refunded within the 30-day period allowed for in 11 C.F.R. § 103.3(b)(2).⁵⁰ However, 11 C.F.R.
15 § 103.3(b)(2)'s refund provision applies in situations where a contribution, at the time it was
16 received and deposited, "did not appear to be made by a corporation, labor organization, foreign
17 national or Federal contractor, or made in the name of another," but is later discovered to be
18 illegal "based on new evidence not available to the political committee at the time of receipt and
19 deposit."⁵¹ In the instant matter, all of the parties are known to one another: a federal candidate
20 paid for certain federal campaign expenses with a credit card, and that credit card bill was paid in
21 full by his nonfederal committee (presumably with the candidate's knowledge).

⁴⁸ Compl. at 7-9.

⁴⁹ Patti for Congress Resp. at 4-5.

⁵⁰ *Id.*

⁵¹ 11 C.F.R. § 103.3(b)(2).

1 Rather than extending § 103.3(b)(2)'s safe harbor to a set of facts that do not appear to be
2 contemplated by the regulations, the Commission should instead dismiss this allegation as an
3 exercise of its prosecutorial discretion. The advance was for a relatively low amount —
4 \$2,399.83. Further, Patti for Congress reimbursed Patti for Supervisor for the expenses long
5 before the Complaint was filed, and before either Patti for Supervisor or Patti for Congress had
6 to disclose the expenditures to the Commission or the FPPC. The Commission has previously
7 dismissed allegations of impermissible nonfederal transfers in cases where a low dollar amount
8 was at issue and the transferred amount was refunded prior to the filing of the Complaint.⁵²

9 The Commission should likewise dismiss the allegation that Patti for Supervisor solicited
10 or received a \$500 in-kind contribution of "Disc Jockey Services for Campaign Event" to benefit
11 Patti for Congress. Patti for Congress's Response states that this contribution's inclusion on
12 Patti for Supervisor's report was the result of a data input error that was later rectified by an
13 amendment.⁵³

14 Accordingly, the Commission should exercise its prosecutorial discretion to dismiss the
15 allegations that Patti for Supervisor advanced funds to Patti for Congress in violation of
16 52 U.S.C. § 30125(e)(1) and 11 C.F.R. § 110.3(d).⁵⁴

⁵² See, e.g., Factual & Legal Analysis ("F&LA"), MUR 6809 (Kultala for Congress).

⁵³ Patti for Congress Resp. at 5.

⁵⁴ See *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

1 **D. The Commission Should Find No Reason to Believe that Patti for**
2 **Supervisor's Payments to Overlapping Vendors Violated the Act's Soft**
3 **Money Prohibition**

4 The Complaint raises concerns about the overlapping vendor relationships between KAL,
5 Gateway, Rosales, and Patti's federal and nonfederal committees.⁵⁵ Specifically, the Complaint
6 theorizes that Patti for Supervisor may have been paying these vendors to perform federal
7 campaign work, stating, for example, that it is "odd" that Patti for Supervisor would pay
8 \$39,886.66 to Gateway for "information technology" services three years in advance of Patti's
9 next Board of Supervisors election.⁵⁶

10 Patti for Congress's Response contends that the federal and nonfederal committees were
11 separately billed for the work performed for each committee, and that the nonfederal committee
12 paid KAL, Gateway, and Rosales only for appropriate nonfederal work.⁵⁷ The Response states
13 that KAL was hired to review and amend 17 of the nonfederal committee's disclosure reports
14 following a letter from the FPPC requesting certain additions to those reports.⁵⁸ The Response
15 states that Gateway and Rosales were hired to consult on and produce monthly e-newsletters and
16 digital advertisements concerning Patti in his supervisorial capacity.⁵⁹ The Commission has
17 found no reason to believe that a violation of the Act's soft money prohibition occurred in
18 similar matters involving officeholder mailers and newsletters of the type "that state
19 officeholders 'routinely' send to their constituents."⁶⁰ Respondents have thus plausibly shown

55 Compl. at 9-11.

56 *Id.*

57 Patti for Congress Resp. at 6-7.

58 *Id.* at 6.

59 *Id.* at 6-7.

60 F&LA at 7, MUR 7954 (Kevin Mullin for Congress).

1 that Patti for Supervisor used nonfederal funds for appropriate nonfederal expenses, and the
 2 Complaint has not provided evidence to displace this showing.

3 Accordingly, the Commission should find no reason to believe that Patti for Supervisor's
 4 payments to KAL, Gateway, and Rosales constituted impermissible transfers to Patti for
 5 Congress in violation of 52 U.S.C. § 30125(e)(1) and 11 C.F.R. § 110.3(d).

6 **V. RECOMMENDATIONS⁶¹**

- 7 1. Find no reason to believe that Thomas Patti; Tom Patti for Congress and Kelly
 8 Lawler in her official capacity as treasurer; and Tom Patti for County Supervisor
 9 2016 and Kimm Lovelace in her official capacity as treasurer violated 52 U.S.C.
 10 § 30125(e)(1) and 11 C.F.R. § 110.3(d) by soliciting, receiving, directing,
 11 transferring, or spending non-federal funds in violation of the Act with respect to
 12 the digital advertisements discussed in the Complaint;
- 13 2. Dismiss, as a matter of prosecutorial discretion, the allegation that Thomas Patti;
 14 Tom Patti for Congress and Kelly Lawler in her official capacity as treasurer; and
 15 Tom Patti for County Supervisor 2016 and Kimm Lovelace in her official
 16 capacity as treasurer violated 52 U.S.C. § 30125(e)(1) and 11 C.F.R. § 110.3(d)
 17 by soliciting, receiving, directing, transferring, or spending non-federal funds in
 18 violation of the Act with respect to advances for printing, travel, website, and
 19 campaign event Disc Jockey expenses;
- 20 3. Find no reason to believe that Thomas Patti; Tom Patti for Congress and Kelly
 21 Lawler in her official capacity as treasurer; and Tom Patti for County Supervisor
 22 2016 and Kimm Lovelace in her official capacity as treasurer violated 52 U.S.C.
 23 § 30125(e)(1) and 11 C.F.R. § 110.3(d) by soliciting, receiving, directing,
 24 transferring, or spending non-federal funds in violation of the Act with respect to
 25 nonfederal services provided to Tom Patti for County Supervisor by vendors who
 26 also provided federal services to Tom Patti for Congress;
- 27 3. Approve the attached Factual and Legal Analysis;
- 28 4. Approve the appropriate letters; and
- 29 5. Close the file.

⁶¹ Because we have recommended that the Commission either 1) find no reason to believe or 2) dismiss as to each of the Complaint's soft money allegations against each of the respondent committees, we similarly recommend that the Commission either find no reason to believe or dismiss, respectively, as to those same allegations against Patti in his personal capacity.

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Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Associate General Counsel for Enforcement

June 28, 2023

Date

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