

**FEDERAL ELECTION COMMISSION**

Washington, D.C. 20463

August 17, 2023

**BY EMAIL AND CERTIFIED MAIL**

Amanda Bogden  
End Citizens United  
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Washington, DC 20035  
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RE: MUR 8083  
Tom Patti for Congress, *et al.*

Dear Ms. Bogden:

The Federal Election Commission has considered the allegations contained in the above referenced complaint from End Citizens United dated October 27, 2022.

On August 8, 2023, the Commission found that there is no reason to believe Thomas Patti, Tom Patti for Congress and Kelly Lawler in her official capacity as treasurer (“Tom Patti for Congress”), and Tom Patti for County Supervisor 2016 and Kimm Lovelace in her official capacity as treasurer (“Tom Patti for County Supervisor”) violated 52 U.S.C. § 30125(e)(1) and 11 C.F.R. § 110.3(d) by soliciting, receiving, directing, transferring, or spending non-federal funds in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”) with respect to the digital advertisements discussed in the complaint and with respect to nonfederal services provided to Tom Patti for County Supervisor by vendors who also provided federal services to Tom Patti for Congress. Further, the Commission voted to dismiss the allegation that Thomas Patti, Tom Patti for Congress, and Tom Patti for County Supervisor violated 52 U.S.C. § 30125(e)(1) and 11 C.F.R. § 110.3(d) by soliciting, receiving, directing, transferring, or spending non-federal funds in violation of the Act with respect to advances for printing, travel, website, and campaign event disc jockey expenses. Accordingly, the Commission closed its file in this matter. The Factual and Legal Analysis which explains these findings is enclosed.

The Federal Election Campaign Act allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 52 U.S.C. § 30109(a)(8). Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016).

If you have any questions, please contact Jake Tully, the attorney assigned to this matter, at (202) 694-1404.

Sincerely,

*Mark Shonkwiler*

Mark Shonkwiler  
Assistant General Counsel

Enclosure: Factual and Legal Analysis

**FEDERAL ELECTION COMMISSION  
FACTUAL AND LEGAL ANALYSIS**

1  
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3  
4 Respondents: Tom Patti for Congress and Kelly Lawler in her MUR 8083  
5 official capacity as treasurer  
6 Tom Patti for County Supervisor 2016 and Kimm  
7 Lovelace in her official capacity as treasurer  
8 Thomas Patti  
9

10 **I. INTRODUCTION**

11 The Complaint alleges that Tom Patti for Congress and Kelly Lawler in her official  
12 capacity as treasurer (“Patti for Congress”) received unlawful transfers from Tom Patti for  
13 County Supervisor 2016 and Kimm Lovelace in her official capacity as treasurer (later renamed  
14 “Tom Patti for County Supervisor 2020”) (herein, “Patti for Supervisor”) when Patti for  
15 Supervisor used nonfederal funds for the apparent benefit of Patti for Congress in violation of  
16 52 U.S.C. § 30125(e)(1) of the Federal Election Campaign Act of 1971, as amended (the “Act”)  
17 and 11 C.F.R. § 110.3(d).

18 Specifically, the Complaint alleges that Patti for Supervisor paid for digital  
19 advertisements; printing, travel, and website expenses; and other expenses on behalf of Patti for  
20 Congress. In its Response, Patti for Congress denies any violations of the Act. The Response  
21 states that: 1) Patti for Congress, rather than Patti for Supervisor, actually paid for the two  
22 digital advertisements discussed in the Complaint, which are valued at approximately \$1,000,  
23 and that these digital advertisements were mislabeled by a vendor as being sponsored by the  
24 nonfederal committee; 2) although Patti for Supervisor’s disclosure reports indicated that it had  
25 paid \$2,399.83 in candidate credit card charges that should have been paid by Patti for Congress,  
26 the error was inadvertent and was remedied after being discovered, and although Patti for  
27 Supervisor’s reports also appeared to disclose a \$500 in-kind contribution for services provided  
28 in connection with a congressional campaign event, this disclosure was the result of an input

1 error; and 3) although Patti for Supervisor made payments to several common vendors also being  
2 utilized by Patti for Congress, these payments were for nonfederal work that did not benefit the  
3 congressional committee.

4 As discussed below, the Commission finds no reason to believe that Respondents  
5 violated 52 U.S.C. § 30125(e)(1) in connection with the digital advertisements described in the  
6 Complaint. The Commission dismisses, as a matter of prosecutorial discretion, the alleged  
7 violations regarding \$2,399.83 in charges from the candidate's credit card for the congressional  
8 campaign's printing, travel, and website expenses that were initially paid by Patti for Supervisor  
9 and later reimbursed by Patti for Congress, as well as alleged violations regarding the reported  
10 \$500 in-kind contribution to Patti for Supervisor concerning a congressional campaign event.  
11 Finally, the Commission finds no reason to believe that the Respondents violated 52 U.S.C.  
12 § 30125(e)(1) in connection with Patti for Supervisor's payments to common vendors for  
13 nonfederal work that did not benefit Patti for Congress.

## 14 **II. FACTUAL BACKGROUND**

15 Thomas Patti, a member of the San Joaquin County Board of Supervisors, was a 2022  
16 candidate to represent California's 9<sup>th</sup> Congressional District in the U.S. House of  
17 Representatives.<sup>1</sup> Patti filed his Statement of Candidacy with the Commission on November 16,  
18 2021.<sup>2</sup> Patti for Supervisor is Patti's nonfederal state campaign committee.<sup>3</sup>

19 The Complaint makes three distinct allegations, all of which concern alleged transfers  
20 from Patti for Supervisor to Patti for Congress in violation of the soft money prohibitions at

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

<sup>2</sup> Thomas Patti, Statement of Candidacy (Nov. 16, 2021).

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

1 52 U.S.C. § 30125(e)(1) and 11 C.F.R. § 110.3(d), and most of which involve simultaneous  
2 relationships between the two committees and three of their campaign vendors: KAL Group  
3 (“KAL”), Rosales Johnson Agency (“Rosales”), and Gateway Media (“Gateway”).<sup>4</sup> The  
4 Commission received a Response from Patti for Congress.<sup>5</sup>

5 First, the Complaint alleges that Patti for Supervisor made an impermissible transfer to  
6 Patti for Congress by paying for the placement of digital advertisements. In support of this  
7 allegation, the Complaint provides data from Meta’s Ad Library showing that digital  
8 advertisements supporting Patti’s congressional candidacy, which were run in November 2021  
9 and April 2022 on Facebook and Instagram, were listed as being paid for by Patti for  
10 Supervisor.<sup>6</sup> An initial group of ads promoted a congressional campaign announcement video  
11 that contained a “Paid for by Tom Patti for Congress” disclaimer.<sup>7</sup> A search of Meta’s Ad  
12 Library reveals that a total of six ads matching this description were run in November 2021, and  
13 these ads were estimated to cost between \$300 to \$498 in total.<sup>8</sup> Another ad, run in April 2022,  
14 invited viewers to attend a congressional campaign event, and cost between \$400 and \$499.<sup>9</sup>

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<sup>4</sup> Compl. at 6-11 (Oct. 27, 2022).

<sup>5</sup> 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.”

<sup>6</sup> Compl. at 2-3.

<sup>7</sup> *Id.*

<sup>8</sup> *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).

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

1 The Complaint argues that, because Patti for Supervisor is reported to have paid for the  
2 placement of these ads, they constituted an impermissible transfer to Patti for Congress.<sup>10</sup>

3 Patti for Congress's Response states that each of the Facebook and Instagram  
4 advertisements discussed in the Complaint was actually paid for by Patti for Congress, and that  
5 "no money or resources from the nonfederal committee were utilized for federal campaign  
6 activities."<sup>11</sup> Patti for Congress also provided statements from its vendor explaining that the  
7 November announcement video was inadvertently run on the Tom Patti for Supervisor account,  
8 rather than the Tom Patti for Congress account, but that the error was immediately corrected, and  
9 that the ad was paid for by Tom Patti for Congress, regardless of the page on which it ran.<sup>12</sup>

10 Both Patti for Congress and Patti for Supervisor reported making disbursements to Gateway in  
11 their disclosure reports covering November 2021.<sup>13</sup> Patti for Congress further states that the  
12 April 2022 ad likewise appeared to bear the Patti for Supervisor disclaimer in error, and provides  
13 statements from a vendor theorizing that this error was caused by Facebook's ad program  
14 inadvertently reverting to an incorrect, previously used disclaimer, rather than using the Patti for  
15 Congress disclaimer that the agency was using to run its other ads.<sup>14</sup> The Response also notes  
16 that this error was immediately corrected when discovered.<sup>15</sup> Patti for Congress reported a  
17 \$3,400 disbursement to Facebook as a subvendor of Gateway on its disclosure report covering

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<sup>10</sup> Compl. at 6-7.

<sup>11</sup> Patti for Congress Resp. at 3, Ex. A at 1-2.

<sup>12</sup> Patti for Congress Resp., Ex. A at 1-2.

<sup>13</sup> 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).

<sup>14</sup> Patti for Congress Resp. at 3-4, Ex. A at 1-2.

<sup>15</sup> *Id.*

1 April 2022.<sup>16</sup> Patti for Supervisor did not disclose any disbursements to Gateway or Facebook  
2 on its disclosure report covering April 2022.<sup>17</sup>

3 Second, the Complaint alleges that Patti for Supervisor's report to the California Fair  
4 Political Practices Commission ("FPPC") disclosed several impermissible advances, focusing  
5 primarily on certain printing, travel, and website expenses that were later reimbursed by Patti for  
6 Congress.<sup>18</sup> Patti for Supervisor's FPPC report discloses a \$765.03 disbursement to Creative  
7 Vision Printing, a \$934.80 disbursement to Marriott, and a \$700.00 disbursement to Mastro's, all  
8 of which bear the reporting description "Reimburse from Tom Patti for Congress."<sup>19</sup> On  
9 December 31, 2021, apparently in response to these expenditures, Patti for Congress made a  
10 \$2,422.84 disbursement to Patti for Supervisor, later reported with the description "Reimburse  
11 Travel, Website and Printing."<sup>20</sup> The Complaint also alleges that Patti for Supervisor's  
12 campaign finance filings showed what appeared to be a \$500 in-kind contribution of "Disc  
13 Jockey Services for a Campaign Event," which the Complaint theorizes was for a federal  
14 campaign event.<sup>21</sup>

15 The Patti for Congress Response states that Patti for Supervisor initially paid for some of  
16 the federal campaign's printing, travel, and website expenses in error, but Patti for Congress

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

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

<sup>18</sup> Compl. at 3-4.

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

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

<sup>21</sup> Compl. at 8.

1 promptly addressed this by issuing a reimbursement to Patti for Supervisor upon discovery.<sup>22</sup>  
2 The Response states that these expenses were initially paid using “Patti’s credit card,” and that  
3 the treasurer for Patti for Supervisor paid the entire credit card bill without realizing that some of  
4 the charges were for federal campaigning.<sup>23</sup> The Response states that this error was discovered  
5 on December 31, 2022, and that Patti for Congress promptly reimbursed Patti for Supervisor the  
6 same day.<sup>24</sup> The Response further states that the inclusion of the alleged \$500 in-kind  
7 contribution of DJ services on Patti for Supervisor’s FPPC report was the result of a data input  
8 error, that this in-kind contribution did not involve Patti for Supervisor, and that Patti for  
9 Supervisor’s FPPC reports have been amended to exclude this contribution.<sup>25</sup>

10 Third, the Complaint draws a connection between payments made to the same vendors by  
11 both Patti for Supervisor and Patti for Congress, which the Complaint suggests may indicate that  
12 Patti for Supervisor paid for federal campaign activity with nonfederal funds.<sup>26</sup> The Complaint  
13 alleges that, from January 1 to December 31, 2021, Patti for Supervisor paid \$3,971.25 to KAL  
14 for accounting services, \$4,000 to Rosales for “information technology costs,” and \$39,886.66 to  
15 Gateway for “information technology costs.”<sup>27</sup> The Complaint notes that Patti for Congress also  
16 had a relationship with these vendors in the latter half of 2021 and into 2022; Patti for Congress  
17 paid KAL \$8,306.04 for bookkeeping from August 26, 2021 to June 4, 2022, Rosales \$26,899.18  
18 for consulting and fundraising services from December 22, 2021 to June 15, 2022, and Gateway

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<sup>22</sup> Patti for Congress Resp. at 4-5.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Compl. at 4.

<sup>27</sup> *Id.*



1 \$139,707.70 for digital and mailed advertisement services from December 31, 2021 to June 23,  
2 2022.<sup>28</sup>

3 Patti for Congress contends that the shared vendors worked on distinct projects and the  
4 committees were billed appropriately. The Response states that each vendor billed each  
5 committee separately for its respective services.<sup>29</sup> The Response also explains that KAL  
6 reviewed and amended 17 reports for Patti for Supervisor in response to a letter from the FPPC,  
7 in addition to working on federal matters for Patti for Congress.<sup>30</sup>

8 Similarly, the Patti for Congress Response states that all federal work done by Gateway  
9 and Rosales was paid for by Patti for Congress.<sup>31</sup> In its Response, Patti for Congress provides a  
10 statement from Gateway and Rosales that Patti for Supervisor engaged the vendors beginning in  
11 April 2021 to produce and consult on social media officeholder communications and a monthly  
12 e-newsletter modeled on another California local official's officeholder newsletter, and that these  
13 services included working with Patti's county staff to identify community events, county  
14 services, and other information that Patti could share in these newsletters and digital  
15 communications.<sup>32</sup>

### 16 **III. LEGAL ANALYSIS**

#### 17 **A. Legal Standard**

18 The Act prohibits federal candidates, officeholders, agents of such candidates or  
19 officeholders, or "an entity directly or indirectly established, financed, maintained or controlled

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<sup>28</sup> *Id.* at 4-5.

<sup>29</sup> Patti for Congress Resp. at 5-6.

<sup>30</sup> *Id.* at 6.

<sup>31</sup> Patti for Congress Resp. at 7.

<sup>32</sup> Patti for Congress Resp., Ex. A at 1.

1 by or acting on behalf of 1 or more candidates or individuals holding Federal office” from  
2 soliciting, receiving, directing, transferring, or spending funds “in connection with an election for  
3 Federal office . . . unless the funds are subject to the limitations, prohibitions, and reporting  
4 requirements of [the] Act.”<sup>33</sup>

5 Further, the Commission’s regulations prohibit “[t]ransfers of funds or assets from a  
6 candidate’s campaign committee or account for a nonfederal election to his or her principal  
7 campaign committee or other authorized committee for a federal election.”<sup>34</sup> The Commission  
8 has explained that this rule’s blanket prohibition on all transfers from a candidate’s nonfederal  
9 committee to that candidate’s federal committee is intended to prevent a federal committee’s  
10 indirect use of soft money.<sup>35</sup> The Commission has interpreted this prohibition to apply to in-kind  
11 transfers of services from a nonfederal committee to a federal committee, such as the provision  
12 of paid polling, fundraising data analysis, and staff work.<sup>36</sup>

### 13 **B. Digital Advertisements**

14 The Complaint alleges that Patti for Supervisor made impermissible transfers to Patti for  
15 Congress by paying for placement of two groups of digital advertisements promoting Patti’s  
16 congressional candidacy on Facebook and Instagram in November 2021 and April 2022.<sup>37</sup> The  
17 Complaint relies on Meta’s Ad Library, which shows that the subject advertisements were paid  
18 for by Patti for Supervisor.<sup>38</sup> The Response states that these advertisements were paid for by

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<sup>33</sup> 52 U.S.C. § 30125(e)(1).

<sup>34</sup> 11 C.F.R. § 110.3(d).

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

<sup>36</sup> *See, e.g.*, Certification (“Cert.”) ¶ 2 (May 24, 2016), MUR 7076 (Richard Tisei).

<sup>37</sup> Compl. at 6-7.

<sup>38</sup> *Id.*

1 Patti for Congress, and that Facebook’s disclaimer stating otherwise was the result of an error  
2 relating to the labeling of earlier nonfederal advertisements paid for by Patti for Supervisor.<sup>39</sup>

3 As discussed below, the available record supports Respondents’ claims that Patti for  
4 Congress paid for the congressional campaign’s digital advertisements and that prior payments  
5 for nonfederal digital advertisements by Patti for Supervisor may have led to the inadvertent use  
6 of a Patti for Supervisor disclaimer on the congressional advertisements. Patti for Congress’s  
7 reports disclose a total of \$17,000 paid to Gateway in November 2021 for “Digital Advertising  
8 Production,” consistent with the Response’s claim that the November 2021 ad was paid for by  
9 the congressional committee.<sup>40</sup> Patti for Congress’s reports show continued disbursements to  
10 Gateway for digital advertising in 2022, and Patti for Congress began listing Facebook as a  
11 subvendor of Gateway in May of 2022.<sup>41</sup> Accordingly, it is plausible that Patti for Congress paid  
12 for the advertisements identified in the Complaint.

13 Patti for Supervisor’s November 2021 payments to Gateway can be explained by a series  
14 of contemporaneous officeholder communications, which were apparently unrelated to Patti’s  
15 federal candidacy. On its July-December 2021 report to the FPPC, Patti for Supervisor disclosed  
16 \$7,089.70 in payments to Facebook and \$2,000 in payments to Instagram, for a total of  
17 \$9,089.70 in payments between both platforms.<sup>42</sup> All of these payments were made through  
18 Gateway.<sup>43</sup> Meta’s Ad Library shows several apparent officeholder communications made

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<sup>39</sup> Patti for Congress Resp. at 3-4, Ex. A at 1-2.

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

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

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

<sup>43</sup> *Id.*

1 between July and December 2021 across both Facebook and Instagram.<sup>44</sup> Meta provides only  
2 rough ranges of costs for its ads, but we calculate that the officeholder communications run  
3 during this six-month period may have cost upwards of \$7,000 in total. Additionally, Meta's Ad  
4 Library shows officeholder ads that Patti for Supervisor ran in June 2021 that may have cost  
5 more than \$3,000 in total.<sup>45</sup> Some of these ads may be reflected on Patti for Supervisor's July-  
6 December 2021 report, depending on when the payments for these June communications were  
7 made.<sup>46</sup> Thus, it is plausible that Patti for Supervisor's reported expenditures during this six-  
8 month period were solely for San Joaquin officeholder communications, with Patti for Congress  
9 paying for the November 2021 congressional campaign communication at issue.

10 Patti for Congress's assertion that it paid for the April 2022 advertisement is similarly  
11 supported by the *lack* of relevant reported expenditures in Patti for Supervisor's 2022 report to  
12 the FPPC. Patti for Supervisor's January-June 2022 report to the FPPC shows no payments to  
13 Facebook or Instagram, consistent with Respondents' claim that the April 2022 advertisement  
14 run during this period was paid for by Patti for Congress, rather than Patti for Supervisor.<sup>47</sup> The  
15 apparent lack of digital advertising disbursements from Patti for Supervisor over the relevant  
16 period, coupled with Patti for Congress's reported disbursements for digital advertisements

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<sup>44</sup> *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).

<sup>45</sup> *Id.*

<sup>46</sup> *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](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 may have been charged and disclosed on Patti for Supervisor's July-December 2021 report.

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

1 during that same period and Patti for Congress's representation that it paid for the April 2022  
2 advertisement, support the conclusion that Patti for Congress paid for this advertisement.

3 Because Respondents have set forth a factual record demonstrating that Patti for  
4 Congress, rather than Patti for Supervisor, paid for these digital advertisements, the Commission  
5 finds no reason to believe that the placement of these advertisements constituted an  
6 impermissible transfer from Patti for Supervisor to Patti for Congress in violation of 52 U.S.C.  
7 § 30125(e)(1) and 11 C.F.R. § 110.3(d).

8 **C. Advance of Printing, Website, and Travel Expenses and Alleged In-Kind**  
9 **Contribution of DJ Services**

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

19 Patti for Congress also argues that these payments should be treated as a contribution  
20 refunded within the 30-day period allowed for in 11 C.F.R. § 103.3(b)(2).<sup>50</sup> However, 11 C.F.R.  
21 § 103.3(b)(2)'s refund provision applies in situations where a contribution, at the time it was

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<sup>48</sup> Compl. at 7-9.

<sup>49</sup> Patti for Congress Resp. at 4-5.

<sup>50</sup> *Id.*

1 received and deposited, “did not appear to be made by a corporation, labor organization, foreign  
2 national or Federal contractor, or made in the name of another,” but is later discovered to be  
3 illegal “based on new evidence not available to the political committee at the time of receipt and  
4 deposit.”<sup>51</sup> In the instant matter, all of the parties are known to one another: a federal candidate  
5 paid for certain federal campaign expenses with a credit card, and that credit card bill was paid in  
6 full by his nonfederal committee (presumably with the candidate’s knowledge).

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

15 The Commission likewise dismisses the allegation that Patti for Supervisor solicited or  
16 received a \$500 in-kind contribution of “Disc Jockey Services for Campaign Event” to benefit  
17 Patti for Congress. Patti for Congress’s Response states that this contribution’s inclusion on  
18 Patti for Supervisor’s report was the result of a data input error that was later rectified by an  
19 amendment.<sup>53</sup>

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<sup>51</sup> 11 C.F.R. § 103.3(b)(2).

<sup>52</sup> *See, e.g.*, Factual & Legal Analysis (“F&LA”), MUR 6809 (Kultala for Congress).

<sup>53</sup> Patti for Congress Resp. at 5.

1           Accordingly, the Commission exercises its prosecutorial discretion and dismisses the  
2           allegations that Patti for Supervisor advanced funds to Patti for Congress in violation of  
3           52 U.S.C. § 30125(e)(1) and 11 C.F.R. § 110.3(d).<sup>54</sup>

#### 4           **D. Overlapping Vendor Payments**

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

11          Patti for Congress’s Response contends that the federal and nonfederal committees were  
12          separately billed for the work performed for each committee, and that the nonfederal committee  
13          paid KAL, Gateway, and Rosales only for appropriate nonfederal work.<sup>57</sup> The Response states  
14          that KAL was hired to review and amend 17 of the nonfederal committee’s disclosure reports  
15          following a letter from the FPPC requesting certain additions to those reports.<sup>58</sup> The Response  
16          states that Gateway and Rosales were hired to consult on and produce monthly e-newsletters and  
17          digital advertisements concerning Patti in his supervisory capacity.<sup>59</sup> The Commission has  
18          found no reason to believe that a violation of the Act’s soft money prohibition occurred in

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

<sup>55</sup>        Compl. at 9-11.

<sup>56</sup>        *Id.*

<sup>57</sup>        Patti for Congress Resp. at 6-7.

<sup>58</sup>        *Id.* at 6.

<sup>59</sup>        *Id.* at 6-7.

1 similar matters involving officeholder mailers and newsletters of the type “that state  
2 officeholders ‘routinely’ send to their constituents.”<sup>60</sup> Respondents have thus plausibly shown  
3 that Patti for Supervisor used nonfederal funds for appropriate nonfederal expenses, and the  
4 Complaint has not provided evidence to displace this showing.

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

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