

**BEFORE THE  
FEDERAL ELECTION COMMISSION**

TIFFANY MULLER  
END CITIZENS UNITED  
100 M STREET SE  
WASHINGTON, D.C. 20003

Complainant,

v.

MARCUS MOLINARO  
PO BOX 5158  
POUGHKEEPSIE, NEW YORK 12602

MARC FOR US INC.  
NICHOLAS JOSEPH, IN HIS OFFICIAL CAPACITY AS TREASURER  
PO BOX 5158  
POUGHKEEPSIE, NEW YORK 12602

MOLINARO FOR DUTCHESS  
PO BOX 1111  
POUGHKEEPSIE, NEW YORK 12602

Respondents.

**COMPLAINT**

This complaint is filed under 52 U.S.C. § 30109(a)(1) against Marcus Molinaro, Marc for US Inc. and Nicholas Joseph in his official capacity as treasurer (the “Federal Committee”), and Molinaro for Dutchess (the “State Committee”), collectively the “Respondents,” for violating the Federal Election Campaign Act of 1971, as amended (the “Act”) and Federal Election Commission (the “FEC” or “Commission”) regulations. Mr. Molinaro not only made two direct contributions from his State Committee to his Federal Committee, but appears to have used his State Committee to pay the expenses of his federal campaign. Subsidizing a federal campaign with non-federal funds is the exact harm that the Bipartisan Campaign Reform Act sought to prevent and that the FEC enacted the transfer prohibition to avoid. Mr. Molinaro’s apparent

violations grossly undermine the Act's anti-corruption and anti-circumvention rationales. The Commission should immediately investigate these apparent violations and take appropriate remedial action against Respondents.

## FACTS

Marcus Molinaro was first elected as County Executive for Dutchess County, New York in 2011.<sup>1</sup> His last election for County Executive was in 2019.<sup>2</sup> His state campaign committee was Molinaro for Dutchess.<sup>3</sup> On September 17, 2021, Mr. Molinaro filed his Statement of Candidacy with the Commission to run for Congress in New York's 19th Congressional District.<sup>4</sup> Mr. Molinaro's federal committee in 2022 was Marc for US Inc., with Nicholas Joseph serving as treasurer.<sup>5</sup> At no time while a candidate for federal office was Mr. Molinaro concurrently a candidate for state office in New York or a candidate for re-election as Dutchess County Executive. The office of Dutchess County Executive is not up for election until November 2023.<sup>6</sup>

On October 1, 2021, less than two weeks after filing for federal candidacy, Mr. Molinaro transferred \$1,000 from his State Committee to his Federal Committee, and disclosed the transfer on his State Committee's campaign finance reports.<sup>7</sup> The transfer from the State Committee was

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<sup>1</sup> DutchessNY.Gov, Dutchess County Executive Marcus J. Molinaro, <https://www.dutchessny.gov/Departments/County-Executive/County-Executive-Marcus-Molinaro-Biography.htm> (last visited Apr. 3, 2023).

<sup>2</sup> *Id.*

<sup>3</sup> Molinaro for Dutchess, N.Y. State Bd. of Elections, <https://publicreporting.elections.ny.gov/CandidateCommitteeDisclosure/CandidateCommitteeDisclosure> (last visited Apr. 3, 2023).

<sup>4</sup> Marc for US Inc., FEC Form 1, Statement of Organization (Sept. 17, 2021), <https://docquery.fec.gov/pdf/449/202109179466713449/202109179466713449.pdf>.

<sup>5</sup> *Id.*

<sup>6</sup> See New York State Board of Elections, 2023 Political Calendar, <https://elections.dutchessny.gov/wp-content/uploads/2023/03/2023-Political-Calendar-3.16.23.pdf> (last visited Apr. 3, 2023).

<sup>7</sup> N.Y. Bd. of Elections, Candidate/Committee Disclosures Search, Molinaro for Dutchess, 2022 January Periodic Itemized Original State/Local Report (Jan. 26, 2022), <https://publicreporting.elections.ny.gov/CandidateCommitteeDisclosure/CandidateCommitteeDisclosure>.

not disclosed on the Federal Committee's reports filed with the Commission.<sup>8</sup> However, the Federal Committee's FEC reports did disclose a contribution of personal funds from Mr. Molinaro in the amount of \$1,000 on September 30, 2021, designated for the primary election.<sup>9</sup> The State Committee reported a second transfer of \$1,000 to the Federal Committee on March 4, 2022.<sup>10</sup> That transfer was disclosed on the Federal Committee's FEC report as being from the State Committee with a memo item entry stating "nonfederal – permissible funds" and was also designated for the primary election.<sup>11</sup>

Additionally, after Mr. Molinaro declared his congressional run, his State Committee reported expenses for "campaign literature," and "print ads" totaling \$2,604.70.<sup>12</sup>

## LEGAL DISCUSSION

### A. Transfers from the State to Federal Committee

The Act prohibits federal candidates from transferring funds or assets from their state committees to their federal committees.<sup>13</sup> The Commission considers direct contributions from a federal candidate's state committee to his federal committee to be a "transfer" of funds.<sup>14</sup> Here, there is irrefutable evidence that the State Committee directly transferred \$1,000 to the Federal

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<sup>8</sup> See Marc for US Inc., October Quarterly Report (Oct. 15, 2021), <https://docquery.fec.gov/pdf/784/202110159467779784/202110159467779784.pdf>; Marc for US Inc., Year-End 2021 Report (Jan. 31, 2022), <https://docquery.fec.gov/pdf/071/202201319485882071/202201319485882071.pdf>.

<sup>9</sup> See Marc for US Inc., October Quarterly Report (Oct. 15, 2021), <https://docquery.fec.gov/pdf/784/202110159467779784/202110159467779784.pdf>.

<sup>10</sup> N.Y. Bd. of Elections, Candidate/Committee Disclosures Search, Molinaro for Dutchess, 2022 July Periodic Itemized Original State/Local Report (July 26, 2022), <https://publicreporting.elections.ny.gov/CandidateCommitteeDisclosure/CandidateCommitteeDisclosure>.

<sup>11</sup> Marc for US Inc., April Quarterly Report (Apr. 15, 2022), <https://docquery.fec.gov/pdf/122/202204159496519122/202204159496519122.pdf>.

<sup>12</sup> See Ex. A.

<sup>13</sup> 11 C.F.R. § 110.3(d) ("Transfers of funds or assets from a candidate's campaign committee or account for a nonfederal election to his or her principal campaign committee or other authorized committee for a federal election are prohibited.").

<sup>14</sup> See Fed. Election Comm'n, First Gen. Counsel's Rep., MUR 5406.

Committee in March 2022, and the Federal Committee accepted that contribution.<sup>15</sup> Although the Federal Committee’s reports have a memo entry stating that the March contribution was made with “permissible funds,” the regulations do not exempt transfers of funds from a candidate’s state committee to their federal committee even if the candidate uses a reasonable accounting method to identify permissible hard money funds for a transfer.<sup>16</sup> The transfer prohibition is a bright-line rule, which Mr. Molinaro and his committees appear to have violated.<sup>17</sup> Additionally, while the Federal Committee’s reports do not disclose a \$1,000 transfer from the State Committee made in 2021, the State Committee’s filings with the New York Board of Elections do, and they indicate that the State Committee made this transfer of funds to the Federal Committee on October 1, 2021.<sup>18</sup> Importantly, the Federal Committee *does* report a contribution on September 30, 2021 for \$1,000 but attributes the contribution to the candidate’s personal funds.<sup>19</sup> The close proximity of the State Committee’s \$1,000 contribution and the \$1,000 contribution that the Federal Committee reports as coming from Mr. Molinaro’s personal funds suggests that the Federal Committee misreported the contribution on its FEC reports. Thus, it appears that the 2021 transfer is also prohibited by the Commission’s regulations.

### **B. Excessive and Impermissible In-Kind Contributions**

The Commission’s regulation at 11 C.F.R. § 110.3(d) likewise prohibits transfers from a federal candidate’s state to federal committee made through in-kind conveyances of goods or

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<sup>15</sup> Marc for US Inc., April Quarterly Report (Apr. 15, 2022), <https://docquery.fec.gov/pdf/122/202204159496519122/202204159496519122.pdf>.

<sup>16</sup> See, e.g., First Gen. Counsel’s Rpt., MUR 7114 (Casperson for Congress) (considering whether a state committee used a reasonable accounting method to make contributions to other candidates, but not when analyzing transfers made to the candidate’s federal committee).

<sup>17</sup> See 11 C.F.R. § 110.3(d).

<sup>18</sup> N.Y. Bd. of Elections, Candidate/Committee Disclosures Search, Molinaro for Dutchess, 2022 January Periodic Itemized Original State/Local Report (Jan. 26, 2022), <https://publicreporting.elections.ny.gov/CandidateCommitteeDisclosure/CandidateCommitteeDisclosure>.

<sup>19</sup> See Marc for US Inc., October Quarterly Report (Oct. 15, 2021), <https://docquery.fec.gov/pdf/784/202110159467779784/202110159467779784.pdf>.

services.<sup>20</sup> Here, since Mr. Molinaro became a federal candidate, the State Committee paid at least \$2,604.70 for “campaign literature,” and “print ads.”<sup>21</sup> Despite spending thousands of dollars on these expenses from the State Committee, Mr. Molinaro was neither campaigning for, nor was he seeking ballot access for, any New York state or local office in the 2022 election cycle. In fact, at the time the disbursements were made, Mr. Molinaro’s next election for Dutchess County Executive was scheduled over two years away, in November 2023.

Thus, there is no logical reason that his State Committee needed to make payments for campaign literature or print ads. Rather it seems more likely that Mr. Molinaro made these payments in connection with his federal campaign—*his only active campaign at the time*. Such transfers are explicitly prohibited by the Commission’s regulations.<sup>22</sup> Therefore, the Commission should immediately investigate this potential violation, as these in-kind contributions would constitute unlawful, excessive contributions from the State Committee to the Federal Committee.

The Act’s safe harbor, allowing a federal candidate who is concurrently running for state or local office to solicit, receive, and spend funds outside of the Act’s amount and source limitations, if such solicitations, receipts, and expenditures are solely in connection with the state or local race,<sup>23</sup> would not apply. As discussed above, Mr. Molinaro was not a candidate for state or local office at the time the disbursements were made, and the re-election for his local office was more than two years away. It strains credulity that any of these campaign-related expenditures were made in connection with a state or local race.

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<sup>20</sup> See Fed. Election Comm’n, MURs 5646, 5426; see also 11 C.F.R. § 100.52(a) (in-kind goods or services are contributions under the Commission’s regulations).

<sup>21</sup> See Ex. A.

<sup>22</sup> 11 C.F.R. § 110.3(d).

<sup>23</sup> 52 U.S.C. § 30125(e)(2).

**REQUESTED ACTION**

As we have shown, Respondents appear to have violated the Act and Commission regulations by making prohibited transfers from the State to the Federal Committee and misreporting at least one of these transfers in reports filed with the Commission. As such, we respectfully request that the Commission immediately investigate this apparent violation, fine Respondents the maximum amount permitted by law, require the Federal Committee to disgorge the unlawful funds it received from the State Committee, and enjoin Respondents from further violations of the law.

Sincerely,



TIFFANY MULLER  
END CITIZENS UNITED  
100 M STREET SE  
WASHINGTON, D.C. 20003

SUBSCRIBED AND SWORN to before me this 11<sup>th</sup> day of April 2023

Mark Andrews

Notary Public

My Commission Expires:

MARK ANDREWS  
NOTARY PUBLIC DISTRICT OF COLUMBIA  
My Commission Expires July 14, 2024

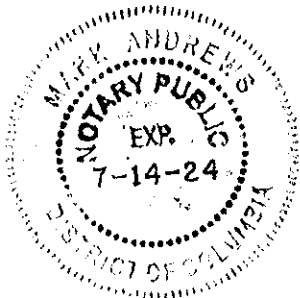


EXHIBIT A<sup>24</sup>

<b>Date</b>	<b>Recipient</b>	<b>Purpose</b>	<b>Amount</b>
10/18/2021	MailChimp	Campaign Literature	\$223.82
12/9/2021	Branding Pros	Campaign Literature	\$130.16
12/21/2021	Constant Contact	Campaign Literature	\$1,109.43
3/4/2022	Hudson Valley Press	Print Ads	\$350.00
3/24/2022	Horizon Messaging Group	Campaign Literature	\$779.29
4/1/2022	Facebook	Campaign Literature	\$12.00
<b>TOTAL</b>			<b>\$2,604.70</b>

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<sup>24</sup> Molinaro for Dutchess, N.Y. State Bd. of Elections, <https://publicreporting.elections.ny.gov/CandidateCommitteeDisclosure/CandidateCommitteeDisclosure> (last visited Apr. 3, 2023).