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FIRST GENERAL COUNSEL'S REPORT

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COMPLAINT FILED: 2/19/2014
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ACTIVATED: 5/20/2014

EARLIEST SOL: 1/14/2019
LATEST SOL: 4/10/2019
ELECTION CYCLE: 2014

COMPLAINANT:

Nick Maietta

RESPONDENTS:

Lizbeth Benacquisto
Lizbeth Benacquisto for Senate and
Gary S. Splain in his official capacity as treasurer
Lizbeth Benacquisto for Congress and
Nancy H. Watkins in her official capacity as
treasurer

RELEVANT STATUTES
AND REGULATIONS:

52 U.S.C. § 30103(a)¹
52 U.S.C. § 30118
52 U.S.C. § 30125(e)
11 C.F.R. § 100.26
11 C.F.R. § 101.1
11 C.F.R. § 102.2
11 C.F.R. § 110.3(d)
11 C.F.R. § 300.63

INTERNAL REPORTS CHECKED:

Disclosure Reports

OTHER AGENCIES CHECKED:

Florida State Disclosure Reports

¹ On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act"), was transferred from Title 2 to new Title 52 of the United States Code.

1 **I. INTRODUCTION**

2 Lizbeth Benacquisto is a Florida State Senator who was a candidate for the Nineteenth
3 Congressional District of Florida in an April 22, 2014 Special Primary Election to replace Trey
4 Radel, who resigned from the seat on January 27, 2014. The Complaint in this matter alleges
5 that Benacquisto impermissibly used state campaign funds to broadcast "name-identification"
6 advertising in January and February 2014 in the congressional district in anticipation of running
7 for Radel's seat. The Complaint thus alleges that Benacquisto and her federal authorized
8 committee, Lizbeth Benacquisto for Congress (the "Federal Committee") violated the Act by
9 using funds from her state committee, Lizbeth Benacquisto for Senate (the "State Committee"),
10 for goods and services, including television and radio advertisements, website registration,
11 design, and management, and social media (Facebook) to benefit her federal campaign.² The
12 Complaint further alleges that the spending of State Committee funds to benefit Benacquisto's
13 federal campaign triggered her candidate status at least a month before Benacquisto registered as
14 a candidate on February 3, 2014, and thus the Federal Committee failed to timely file a
15 Statement of Organization in violation of the Act.³ The Complaint requests that the Commission
16 conduct an investigation to determine whether Respondents improperly used State Committee
17 funds and assets for the federal campaign.⁴

18 In a joint response, Respondents deny the allegations that Benacquisto and the Federal
19 Committee received a prohibited transfer of funds or assets from the State Committee, asserting
20 that: (1) the advertisements cited in the Complaint qualify for the state candidate exemption

² Compl. at 4-7 (Feb. 19, 2014):

³ *Id.* at 6.

⁴ *Id.* at 5, 7.

1 under Commission regulations and ran before Benacquisto became a federal candidate and
2 (2) the Federal Committee paid fair market value for the State Committee assets it used and
3 properly reported these expenditures.⁵ They also assert that the State Committee spending did
4 not trigger candidate status and that the Federal Committee timely filed its Statement of
5 Organization based on the dates that Benacquisto filed her Statement of Candidacy and met the
6 \$5,000 threshold for becoming a candidate.⁶

7 As discussed below, we recommend that the Commission find no reason to believe that
8 Respondents violated 52 U.S.C. § 30125(e)(1) (formerly 2 U.S.C. § 441i(e)(1)) or 11 C.F.R.
9 § 110.3(d) in connection with the alleged transfer of funds or assets described in the Complaint.
10 We further recommend that the Commission find no reason to believe that the Federal
11 Committee violated 52 U.S.C. § 30103(a) (formerly 2 U.S.C. § 433(a)) by failing to file on time
12 its Statement of Organization and close the file in this matter.

13 II. FACTUAL AND LEGAL ANALYSIS

14 A. Factual Background

15 Benacquisto is a Florida State Senator, representing District 30 since her election in 2010.
16 She is a candidate seeking reelection in the 2014 state elections.⁷

17 In October 2013, Congressman Trey Radel was arrested in the District of Columbia.⁸ In
18 November 2013, following his guilty plea to cocaine possession and sentence to one year of

⁵ Resp. at 1 (Apr. 28, 2014).

⁶ *Id.*

⁷ Resp. at 2, Attach. A, B.

⁸ Jake Sherman, *Trey Radel Pleads Guilty to Cocaine Possession*, POLITICO (Nov. 20, 2013),
<http://www.politico.com/story/2013/11/trey-radel-cocaine-possession-pleads-guilty-100121.html>.

1 supervised probation, Radel announced he would take a leave of absence from Congress.⁹
2 Following this announcement, Florida Republican leaders urged Radel to resign.¹⁰ On
3 January 27, 2014, Radel tendered his resignation.¹¹

4 On February 3, 2014, Benacquisto announced her candidacy for the April 22, 2014
5 Special Primary Election to replace Radel.¹² On the same day, Benacquisto launched a website
6 "lizbethforcongress.com," and filed a Statement of Candidacy and Statement of Organization
7 forming Lizbeth Benacquisto for Congress (the "Federal Committee"). The domain name
8 "LizbethforCongress.com" had been registered with GoDaddy.com on December 30, 2013.¹³

9 From January 6 to February 2, 2014, the month before Benacquisto formally declared her
10 candidacy for federal office, the State Committee ran television and radio advertisements
11 concerning Benacquisto's accomplishments as a state official. State Committee disclosure
12 reports show a \$10,000 disbursement to Meteoric Media Strategies for "media production" on
13 December 9, 2013 and a \$167,500 disbursement to McLaughlin and Associates for "media

⁹ Jake Sherman, *Trey Radel Takes Leave of Absence from Congress*, POLITICO (Nov. 20, 2013), <http://dyn.politico.com/printstory.cfm?uuid=4B52FB52-9865-4EF2-B9C6-FBB2FE8326FB>.

¹⁰ Jeff Henderson, *Republicans Gear Up to Replace Trey Radel in Congress*, SUNSHINE STATE NEWS (Nov. 28, 2013), <http://www.sunshinestateneews.com/print/5662934>.

¹¹ Jake Sherman and Alex Isenstadt, *Trey Radel Resigns from House Seat*, POLITICO (Jan. 27, 2014), <http://www.politico.com/story/2014/01/trey-radel-resignation-102642.html?hp=t1>.

¹² Jenna Buzzacco-Foerster, *State Sen. Lizbeth Benacquisto Announces Run for Congress*, NAPLES DAILY NEWS (Feb. 3, 2014), <http://www.naplesnews.com/news/state/state-sen-lizbeth-benacquisto-announces-run-congre>. Benacquisto lost that election. See Abby Livingston, *Self-Funding Republican Wins Primary in Race to Replace Trey Radel*, ROLL CALL (Apr. 22, 2014), <http://atr.rollcall.com/self-funding-republican-wins-primary-in-race-to-replace-trey-radel/>.

¹³ See Compl. at 1 <http://whois.net/whois/lizbethforcongress.com>.

1 advertising" on January 2, 2014.¹⁴ The advertisements include a disclaimer indicating that the
 2 state senate campaign paid for the advertisements. A transcript of the advertisements follows:

3 "Trusted Voice" — FL State Campaign TV Advertisement¹⁵
 4

VIDEO	AUDIO
<p><i>Video clip of Benacquisto with veterans.</i></p> <p><i>On-screen news banner: A TRUSTED VOICE</i></p> <p><i>Caption: LIZBETH BENACQUISTO</i></p>	<p>[Voiceover:]</p> <p><i>Lizbeth Benacquisto, southwest Florida's conservative voice</i></p>
<p><i>Video clip of Benacquisto in various locations interacting with different groups of people (veterans, seniors, workplace/employees, playground/children).</i></p> <p><i>On-screen news banners: CONSERVATIVE, BALANCED BUDGET, CUTTING TAXES, FOR OUR SENIORS, FOR OUR FUTURE</i></p> <p><i>Caption: LIZBETH BENACQUISTO</i></p>	<p>[Benacquisto:]</p> <p><i>In Florida, conservative values are getting us back on track — reducing spending to balance the budget and cutting taxes so you can keep more of the money you've earned. I fought to protect seniors and honor Florida's veterans — all while making sure the next generations have the tools they need to succeed.</i></p>
<p><i>Video clip of Benacquisto with miscellaneous people.</i></p> <p><i>On screen news banners: THE NEWS-PRESS "IN SOUTHWEST FLORIDA, BENACQUISTO LIVES BY THE CREDO OF GIVING." - DECEMBER 27, PAID BY LIZBETH BENACQUISTO, REPUBLICAN FOR STATE SENATE, DISTRICT 30</i></p> <p><i>Caption: LIZBETH BENACQUISTO, LIZBETH BENACQUISTO FOR STATE SENATE.</i></p>	<p>[Voiceover:]</p> <p><i>Lizbeth has been recognized for her public service and her commitment to us. Lizbeth Benacquisto.</i></p>

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¹⁴ See Florida Department of State, Division of Elections, 2014 General Election Expenditures for Lizbeth Benacquisto, <http://election.dos.state.fl.us/cgi-bin/pend.exe>.

¹⁵ See Resp. at 2-3; http://www.youtube.com/watch?v=3uu_mjWpObs.

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FL State Campaign Radio Advertisement¹⁶

<p>[Voiceover:]</p> <p><i>Lizbeth Benacquisto, a trusted conservative and our voice in the Florida Senate.</i></p>
<p>[Benacquisto:]</p> <p><i>In Florida, conservative values are getting us back on track, reducing spending to balance the budget, and cutting taxes so you can keep more of the money you've earned.</i></p>
<p>[Voiceover:]</p> <p><i>Lizbeth Benacquisto is committed to making government smaller, so families pay less, and small business owners can get people back to work. Lizbeth wants to ensure we fulfill the promises we've made to those whose courage and greatness built our nation.</i></p>
<p>[Benacquisto:]</p> <p><i>I've fought to protect seniors, and honor Florida's veterans, all while making sure the next generations have the tools they need to succeed.</i></p>
<p>[Voiceover:]</p> <p><i>Tools for success, like the best schools, cutting-edge technology and the most talented teachers. For our families and for our future, Lizbeth Benacquisto, a leader for southwest Florida. A leader we can trust.</i></p>
<p>[Voiceover:]</p> <p><i>Paid by Lizbeth Benacquisto, Republican for Florida Senate, District 30.</i></p>

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The Complaint concludes that the television and radio advertisements were intended to benefit the federal campaign based on several facts, including that (1) the State Committee spent \$165,000 on a media campaign in January and February 2014 when the state primary election is

¹⁶ Resp. at 3.

1 in August 2014 and Benacquisto has no “viable opponent”¹⁷ in the state senate race; (2) the
2 advertisements portray Benacquisto “generally in a positive light” and do not reference any
3 “state initiatives” by Benacquisto; (3) the advertisements do not state by voiceover that
4 Benacquisto is running for the state senate except for the disclaimer statement at the end of the
5 advertisements; (4) the advertisements do not state the state senate election date; (5) the
6 advertisements aired in the 19th Congressional District days before Benacquisto declared her
7 candidacy for federal office; and (6) the federal campaign used the images from the state
8 campaign advertisements in later federal campaign advertisements.¹⁸

9 The Complaint further asserts that funds of the State Committee may have been spent for
10 website registration, design, and management and on social media accounts to benefit the
11 Federal Committee. First, the Complaint contends that the timing of the December 30, 2013
12 registration of the domain name for Benacquisto’s federal campaign website,
13 LizbethForCongress.com, is suggestive. That domain name was registered a month before
14 Benacquisto declared her federal candidacy, but only a few days before she launched the series
15 of television and radio advertisements that the Complaint alleges also were intended to benefit
16 the federal campaign. From this, the Complaint concludes that Benacquisto had decided to run
17 for federal office at the latest by December 30, 2013, and that the State Committee’s funds likely

¹⁷ The Complaint asserts that Thomas LePine, who filed to run for the 2014 state senate seat in District 30, is not a serious opponent, citing his failure to campaign and to qualify for the ballot when he ran for the same seat in 2012, and that LePine is merely a cover to use state campaign funds. Compl. at 1, 4.

¹⁸ *Id.* at 2, 4. The Complaint appends several news articles discussing the timing of the state campaign advertisements and their similarity to the federal campaign advertisements and website. Javier Manjarres, *GOP Race To Replace Trey Radel Spicens Up*, SHARK TANK (Feb. 3, 2014), <http://shark-tank.com/2014/02/03/gop-race-to-replace-trey-radel-spicens-up/>; Warren Wright, *Too Close for Comfort? Questions About Candidate's Simultaneous Campaigns*, FOX4 (Feb. 5, 2014), <http://www.jm.com/fox4now/news/Questions-about-combining-resources-with-Benacquistos-Federal-and-State-campaigns-243830171.html>.

1 were used to register, design, and manage the Federal Committee's website.¹⁹ The Complaint
2 also asserts that the State Committee spent "thousands of dollars" to create and manage social
3 media accounts for Benacquisto and, by changing the focus of her Facebook page from
4 Benacquisto's state senate career to her federal campaign, the State Committee transferred
5 valuable assets to the Federal Committee.²⁰

6 Finally, the Complaint alleges that the Federal Committee should have filed its Statement
7 of Organization within ten days of the State Committee's expenditures for the advertisements,
8 social media efforts, and website creation and management that benefited her federal campaign.
9 The Complaint contends that the December 30, 2013 website domain registration date was "the
10 latest possible date that Benacquisto can be shown to have intent to run," and therefore the
11 Federal Committee's February 4, 2014 filing was untimely.²¹

12 B. Legal Analysis

13 1. Nonfederal Funds

14 The Act restricts certain uses of nonfederal funds,²² including corporate funds, by federal
15 candidates.²³ Specifically, the Act prohibits federal candidates, their agents, and entities directly
16 or indirectly established, financed, maintained, or controlled by federal candidates from
17 soliciting, receiving, directing, transferring, or spending funds in connection with an election for
18 federal office, including funds for any federal election activity, unless the funds are subject to the

¹⁹ Compl. at 5.

²⁰ *Id.* at 6.

²¹ *Id.* at 7.

²² "Federal" funds are "funds that comply with the limitations, prohibitions, and reporting requirements of the Act." 11 C.F.R. § 300.2(g).

²³ *See* 52 U.S.C. § 30125(e)(1)(A) (formerly 2 U.S.C. § 441i(e)(1)(A)); 11 C.F.R. § 300.61.

1 limitations, prohibitions, and reporting requirements of the Act.²⁴ Florida law allows state
2 candidates to accept contributions from corporations and unions.²⁵ Thus, contributions made to
3 Benacquisto's Florida state committee are not subject to the prohibitions of the Act.²⁶ Further,
4 Commission regulations prohibit the transfer of funds or assets from a candidate's campaign
5 committee for a nonfederal election to his or her principal campaign committee.²⁷

6 Nonetheless, the Act expressly provides that a federal candidate who is also a candidate
7 for state or local office may solicit, receive, or spend nonfederal funds in connection with that
8 candidate's election to state or local office, so long as it is permitted under state law and refers
9 only to that state or local candidate or to any other candidate for that same state or local office.²⁸

10 Respondents assert that no improper transfer of assets or value occurred here because the
11 advertisements qualify for the state candidate exemption and ran before Benacquisto became a
12 federal candidate. Respondents further assert that the Federal Committee paid fair market value
13 for the State Committee assets it used and properly reported those expenditures.

14 a. Television and Radio Advertisements

15 From January 6 to February 2, 2014, in the wake of the events concerning Radel and a
16 month before Benacquisto formally declared her candidacy for federal office, the State

²⁴ 52 U.S.C. § 30125(e)(1)(A) (formerly 2 U.S.C. § 441i(e)(1)(A)); 11 C.F.R. § 300.61. Under the Act, "federal election activity" includes public communications that refer to a clearly identified candidate for federal office and that promote, attack, support, or oppose ("PASO") a candidate for that office, regardless of whether the communication expressly advocates the election or defeat of the candidate. 52 U.S.C. § 30101(20)(A)(iii) (formerly 2 U.S.C. § 431(20)(A)(iii)); 11 C.F.R. § 100.24(b)(3).

²⁵ FLA. STAT. §§ 106.08, 106.11 (2013).

²⁶ See 52 U.S.C. § 30118 (formerly 2 U.S.C. § 441b). The State Committee disclosed the receipt of contributions from sources that would be prohibited under the Act.

²⁷ 11 C.F.R. § 110.3(d).

²⁸ 52 U.S.C. § 30125(e)(2) (formerly 2 U.S.C. § 441i(e)(2)); 11 C.F.R. § 300.63.

1 Committee paid for and ran television and radio advertisements featuring Benacquisto. The
2 Complaint asserts that the advertisements were intended to bolster Benacquisto's name
3 identification in support of her federal campaign and that images from the advertisements were
4 later used in her federal campaign advertisements. Respondents argue that the television and
5 radio segments did not constitute a transfer of state funds or assets to Benacquisto's federal
6 campaign because Benacquisto was not a federal candidate at the time the advertisements ran.
7 They further argue that even if she was a federal candidate at that time, the expenditure would
8 still be allowable under the Act because she was and is a candidate for state office, the
9 expenditure was permitted under state law, and the expenditure refers only to the State candidate
10 whose committee made the expenditure, Lizbeth Benacquisto, and to no other candidates or to
11 the federal election. Citing to previous matters, Respondents argue that it is irrelevant to the
12 analysis whether Benacquisto had an opponent,²⁹ or the timing of communication relative to the
13 state election.³⁰

14 Benacquisto was and is a candidate for state office in Florida. The advertisements
15 referred only to her as a state officeholder and candidate and to no other federal candidate. The
16 advertisements also do not reference any election other than the state race — through a visual of
17 the Lizbeth Benacquisto for State Senate committee logo on the television advertisement and the
18 disclaimer on a radio ad stating that Benacquisto is a “Republican for Florida Senate, District 30”
19 and that her campaign paid for the ad. The content of the advertisements themselves focuses on

²⁹ Resp. at 2, 8, citing to Statement of Reasons, Comm'rs Peterson, Bauerly, McGahn, and Weintraub at 2, MUR 6216 (Coakley) (Commission allowed federal committee to purchase assets (fundraising database, redesigned website, domain names, yard signs, posters, etc.) from the state committee on the same day Coakley announced her candidacy even though Coakley ran unopposed and the state race was 14 months away.).

³⁰ *Id.*, citing to Statement of Reasons, Comm'rs Petersen, Bauerly, Hunter, McGahn, and Weintraub at 4, n.3, MUR 6207 (DeSaulnier) (“As here, provided that the requirements of the Section 441(i) exception are satisfied, the timing of a communication is immaterial to the application of the exception.”).

1 her accomplishments as a state senator.³¹ In sum, although the advertisements are
2 complimentary to Benacquisto, they do not support or promote her federal candidacy except in
3 the general sense that any portrayal of a candidate in a positive light in a public communication
4 arguably would support that candidate's federal aspirations. If that fact were sufficient to take
5 the advertisements out of the state-candidate exemption, however, the exemption would rarely if
6 ever apply.³²

7 Accordingly, because the record reflects that Benacquisto qualified for the state candidate
8 exemption, we recommend that the Commission find no reason to believe that Respondents
9 violated 52 U.S.C. § 30125(e) (formerly 2 U.S.C. § 441i(e)) in connection with the television
10 and radio advertisements.

11 b. Use of Images from State Campaign Advertisements

12 The Complaint further asserts that an impermissible transfer of value may have occurred
13 because images used in the state senate campaign television advertisements later appeared in
14 television advertisements for the federal campaign. Images from the state advertisements
15 showing Benacquisto interacting with or talking to various groups of persons — *e.g.*, seniors,
16 veterans, and employees of a business — also appeared in advertisements that ran during
17 Benacquisto's federal campaign.

18 The Commission has permitted the transfer of a nonfederal committee's assets to the
19 campaign committee of a candidate for federal office where the federal committee pays the fair

³¹ In addition, that the advertisements ran in the Nineteenth Congressional District is not particularly material here, as the state senate-district overlaps with that congressional district.

³² See MUR 5411 (Winters), First General Counsel's Report.

1 market value or the "usual and normal charge" for the use of such assets.³³ When the state
2 committee does not own the asset, the federal committee must pay the usual and normal charge
3 for use of the asset from the proper owner.³⁴

4 Respondents acknowledge that the Federal Committee used certain images that the State
5 Committee used as well, but note that the images are owned by the vendor, Meteoric Media,
6 which retained "ownership and all rights to the video footage and audio recordings . . . in
7 perpetuity."³⁵ Meteoric Media's invoice to the State Committee for production indicates
8 "Licensing the video footage and audio recordings for broadcast use will incur additional fees
9 and is solely at the discretion of Meteoric Media Strategies, LLC."³⁶ Respondents further
10 provide copies of the invoices and disclosure reports reflecting the Federal Committee's payment
11 to Meteoric Media and assert that because the Federal Committee paid fair market value to a
12 third party for the use of the images, there was no impermissible transfer of any asset between
13 the committees.³⁷

14 The Complaint does not allege nor does the available information indicate that the
15 Federal Committee's payments for the use of the challenged images were not made under current

³³ Transfer of Funds from State to Federal Campaigns, 58 Fed. Reg. 3474, 3475 (Jan. 8, 1993) ("the rule should not be read to proscribe the sale of assets by the state campaign committee to the federal campaign committee, so long as those assets are sold at fair market value"); *see also* Statement of Reasons of Comm'rs Walther, Petersen, Bauerly, Hunter, and Weintraub, MUR 5964 (Schock for Congress) (permitting the transfer of a nonfederal committee's assets to the campaign committee of a candidate for federal office when such transfer was conducted under current market practices and at the usual and normal charges). The Commission's regulations define "usual and normal charge" as "the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution." 11 C.F.R. § 100.52(d)(2).

³⁴ See First Gen. Counsel's Rpt. at 7, MUR 5964 (Schock for Congress).

³⁵ Resp. at 11-12.

³⁶ See Resp. at 3, Attach. D, Meteoric Media Strategies Invoice to Lizbeth Benacquisto for State Senate (Dec. 5, 2013).

³⁷ See Resp. at 4, 12; *id.*, Attach. E, 2014 Pre-Primary Report, Transactions D68-000501, D69-000502; Meteoric Media Invoices (Feb. 3, 2014, Mar. 18, 2014).

1 market practices and at the usual and normal charges.³⁸ Accordingly, we recommend that the
2 Commission find no reason to believe that Respondents violated 11 C.F.R. § 110.3(d).

3 c. Website Registration, Design, and Management

4 The Complaint alleges that State Committee funds may have been used to pay for the
5 registration, design, and management of the Federal Committee's website,
6 LizbethforCongress.com. However, the Complaint did not provide any evidence that State
7 Committee funds were used for such purposes. Rather, it contends that an investigation would
8 likely show that State Committee funds were used to develop the website because the website
9 domain name was registered a month before Benacquisto declared her federal candidacy and
10 shortly before the State Committee paid for and aired the television and radio advertisements.
11 Respondents deny that the State Committee had any role in developing the website or made any
12 expenditures in connection with the website.³⁹ Instead, Respondents assert that they hired a
13 vendor to secure, develop, and manage the website and the website was procured through a
14 regular business transaction between the Federal Committee and a vendor.⁴⁰

15 The Federal Committee's mere registration of its domain name around the time that the
16 State Committee ran television and radio advertisements, without more, does not give rise to a
17 reasonable inference that the funds of the State Committee were used to develop the campaign
18 website of the Federal Committee. Moreover, while State Committee disclosure reports reflect
19 disbursements for internet-related services such as "website," "web fees," "internet services,"
20 and "internet fee" between 2009 and 2013, they do not reflect any specific disbursements for

³⁸ *Id.* at 12.

³⁹ Resp. at 11.

⁴⁰ *Id.*

1 website registration, design, or management during the period relevant here — that is, October
2 2013 through February 2014.⁴¹ By contrast, the Federal Committee's disclosure reports reflect
3 several transactions related to the website: a \$500 disbursement on February 13, 2014 to
4 Meteoric Media Strategies for "website photos"; a \$721.25 disbursement on March 18, 2014 to
5 Public Concepts, LLC, for "research/domains"; and a \$7,480 debt to Public Concepts, LLC, for
6 website design.⁴² Thus, given the lack of any indication that the State Committee disbursed
7 funds in connection with the development of the Federal Committee's website and evidence of
8 disbursements by the Federal Committee for the website, we recommend that the Commission
9 find no reason to believe that Respondents violated 11 C.F.R. § 110.3(d).

10 d. Lizbeth Benacquisto's Facebook Page

11 The Complaint also alleges that an impermissible transfer of value occurred when the
12 Facebook page associated with Benacquisto transitioned from promoting her state senate
13 campaign to the federal candidacy.⁴³ In support of this allegation, the Complaint claims that the
14 State Committee has spent "tens of thousands of dollars" to manage her social media accounts
15 and that, because state funds were likely spent to create and manage those accounts, inquiries
16 must be made to determine whether the federal campaign paid the "usual and normal charge" for
17 these assets.⁴⁴

18 The current cover photo on Benacquisto's Facebook page identifies her as a Florida State
19 Senator for District 30 and the page focuses on her activities as a state senator. During the

⁴¹ The State Committee reported two disbursements to Edonation during that period (\$153.10 on November 8, 2013, and \$67.67 on December 9, 2013) for "internet fee." Edonation appears to be a firm which provides online fundraising services.

⁴² Amended 2014 Pre-Special Report at 250, 255, 268 (Apr. 24, 2014).

⁴³ Compl. at 8.

⁴⁴ *Id.*

1 period that she ran for federal office, the cover photo of the Facebook page was changed to
2 "Lizbeth Benacquisto for Congress" and included postings, comments, and endorsements related
3 to her federal candidacy.

4 Respondents assert that the Facebook page is Benacquisto's personal page and is not
5 specific to any campaign.⁴⁵ They further argue that Facebook is a free internet service and that
6 Facebook "followers," "friends," or "likes" have no extrinsic value because Facebook controls
7 how posts are distributed and the information cannot be sold or purchased.⁴⁶ Finally, they argue
8 there is no Commission rule, policy, or precedent that suggests that a Facebook profile is an asset
9 that has value.⁴⁷

10 There is no basis presented in the Complaint to conclude that State Committee funds or
11 assets were used to manage Benacquisto's Facebook page. Facebook is an online free social
12 networking service. The disclosure reports of both the State Committee and Federal Committee
13 reflect no disbursements related to any Facebook page or "social media." Further, the postings
14 on a Facebook profile or page would likely qualify as internet communications that are not
15 placed for a fee on another's website (thus, they are not public communications or electioneering
16 communications).⁴⁸ They also would likely constitute internet activity, such as political
17 blogging, that is exempt from the definition of "contribution" and "expenditure."⁴⁹ For all these

⁴⁵ Resp. at 12.

⁴⁶ *Id.* at 12-13.

⁴⁷ *Id.* at 12.

⁴⁸ See 11 C.F.R. § 100.26; *see also* MUR 6522 (Lisa Wilson-Folcy for Congress, *et al.*).

⁴⁹ See 11 C.F.R. §§ 100.94, 100.55; *see also* Explanation and Justification, Internet Communications, 71 Fed. Reg. 18,590, 18,594 (Apr. 12, 2006) (reasoning that "communication through one's own website is analogous to a communication made from a soapbox in a public square").

1 reasons, we recommend that the Commission find no reason to believe that Respondents violated
2 11 C.F.R. § 110.3(d) in connection with the Facebook page.

3 2. Candidate Status

4 Under the Act, “an individual who seeks nomination for election, or election, to Federal
5 office” is a candidate and “shall be deemed to seek nomination for election, or election” when he
6 receives contributions or makes expenditures in excess of \$5,000.⁵⁰ A candidate is required to
7 designate in writing a principal campaign committee within fifteen days of reaching this \$5,000
8 threshold.⁵¹ The designated principal campaign committee, in turn, is required to file a
9 Statement of Organization within ten days of designation or, alternatively, report any change in
10 information previously submitted on its Statement of Organization within ten days of the
11 change.⁵²

12 The Complaint alleges that the Federal Committee should have filed a Statement of
13 Organization within ten days following the use of the State Committee funds/assets to benefit the
14 federal campaign. The basis for the allegation is that Benacquisto formed an intent to run for
15 Congress on December 30, 2013, when the campaign website domain name was registered and
16 when State Committee funds were allegedly used for the federal campaign. Respondents assert
17 that they timely filed the Statements of Candidacy and Organization on the same day that
18 Benacquisto announced her candidacy for federal office on February 3, 2014.

⁵⁰ 52 U.S.C. § 30101(2) (formerly 2 U.S.C. § 431(2)).

⁵¹ *Id.* § 30101(e)(1) (formerly 2 U.S.C. § 432(e)(1)).

⁵² *Id.* § 30103(a), (c) (formerly 2 U.S.C. § 433(a), (c)).

1 The Complaint does not allege that Benacquisto conducted any “testing the waters” or
2 exploratory activity and Respondents deny that they conducted such activities.⁵³ Further,
3 although registration of a domain name for the congressional website — the first step in
4 establishing a website — may raise some question concerning Benacquisto’s then-existing state
5 of mind as to a possible candidacy, it is not an unequivocal indication that she had decided to
6 become a candidate. In any event, even were the mere registration of a congressional domain
7 name a sufficient indication of a decision to run, it would not alone trigger candidate status since
8 the amount spent to register the name was well below the \$5,000 threshold. Rather, the Federal
9 Committee’s disclosure reports reflect that Benacquisto reached the \$5,000 candidate threshold
10 on February 7, 2014, when the Committee passed the \$5,000 contribution threshold.⁵⁴

11 We therefore recommend that the Commission find no reason to believe that the Federal
12 Committee violated 52 U.S.C. § 30103(a) (formerly 2 U.S.C. § 433(a)) in connection with the
13 Federal Committee’s alleged failure to file its Statement of Organization on time.

14 **III. RECOMMENDATIONS**

- 15 1. Find no reason to believe that Lizbeth Benacquisto violated 52 U.S.C. § 30125(e)(1)
16 (formerly 2 U.S.C. § 441i(e)(1)) or 11 C.F.R. § 110.3(d).
17
18 2. Find no reason to believe that Lizbeth Benacquisto for Congress and Nancy H.
19 Watkins in her official capacity as treasurer violated 52 U.S.C. §§ 30103(a),
20 30125(e)(1) (formerly 2 U.S.C. §§ 433(a), 441i(e)(1)) or 11 C.F.R. § 110.3(d).
21
22 3. Find no reason to believe that Lizbeth Benacquisto for Senate and Gary S. Splain in
23 his official capacity as treasurer violated 52 U.S.C. § 30125(e)(1) (formerly 2 U.S.C.
24 § 441i(e)(1)) or 11 C.F.R. § 110.3(d).
25
26 4. Approve the attached Factual and Legal Analysis.
27
28 5. Approve the appropriate letters.

⁵³ Resp. at 5, n.12.

⁵⁴ See 2014 Pre-Special Report, Sched. A, at 147 (Apr. 24, 2014).

