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BY EMAIL CELA@fec.gov AND REGULAR MAIL

Office of General Counsel
Federal Election Commission
1050 First Street, NE
Washington, DC 20463

Re: *Unlawful Use of Nonfederal Funds by Eugene DePasquale, Candidate for Congress in Pennsylvania's Tenth District*

To Whom It May Concern:

This letter constitutes a complaint against Eugene DePasquale, currently Pennsylvania Auditor General, as well as his nonfederal and federal campaign committees, for using at least \$113,050 of his nonfederal campaign committee funds to support his federal campaign for U.S. House of Representatives in Pennsylvania's Tenth Congressional District. Because Pennsylvania campaign finance law does not have contribution restrictions like those applicable under federal law, DePasquale consequently used prohibited source monies to further his testing phase and/or his candidacy phase.

Further, because DePasquale spent more than \$5,000 in early March when he began contracting with political firms for campaign-related services, he consequently crossed the federal "candidate" threshold in March, meaning he violated the requirement to file a Statement of Candidacy within 15 days of "candidate" status and the requirement to file a Statement of Organization within 10 days of the Statement of Candidacy. DePasquale, his nonfederal committee, and his federal campaign committee should all be named as respondents.

The Federal Election Commission should investigate this matter immediately and, at a minimum, secure an agreement with DePasquale, his nonfederal committee, and his federal campaign committee to (1) pay appropriate penalties for the violations committed and (2) repay the \$113,050 in misappropriated funds back to his nonfederal committee.

1. Factual Background¹

The subject matter of this complaint is derived from two primary sources: (1) a series of news articles and social media activity published between March and June of 2019 revealing DePasquale's intention to run for Congress and (2) an October 25, 2019, campaign finance report filed by DePasquale's nonfederal political committee, "Eugene DePasquale for Pennsylvania," listing \$113,050 in campaign-related expenditures that are unrelated to his nonfederal campaign.

A. News Articles and Social Media Activity Indicate DePasquale's Candidacy for Congress

DePasquale's candidacy for Congress was first reported on March 26, 2019, by Alex Clearfield, a political reporter for the *National Journal*, who wrote on Twitter: "Per three sources, Pennsylvania state Auditor General Eugene DePasquale (D) is strongly considering challenging Rep. Scott Perry (R) in #PA10. DePasquale, who passed on a run in 2018, had previously been thought to be waiting for a statewide run in 2022."² DePasquale took notice of the report himself, posting a tweet at 4:11 am the following morning stating the he "woke up to see a bunch of #twitter mentions of me."

Less than 24 hours later, on March 27, 2019, *PoliticsPA* published a story citing Clearfield's tweet about DePasquale's intention to run for Congress.³ The article, which includes comments from DePasquale, describes him as being "open with his thoughts about Congress" and includes a quote from DePasquale saying that "[r]eform is needed in Washington D.C." *Id.*

Less than a week later, on April 2, 2019, DePasquale began purchasing ads on Facebook using funds from his nonfederal committee. Specifically, as reported by the *Pennsylvania Capital-Star*, DePasquale paid \$23,997 from his nonfederal committee to buy 27 separate Facebook ads.⁴ The ads "play[ed] up his advocacy on prescription drug pricing and success in cutting down on unanswered child abuse hotline calls." *Id.*⁵ The article further noted further that

¹ Blank Rome LLP serves as counsel to Tom Brier for Congress, the authorized campaign committee of Tom Brier who is running for the same congressional district. All factual representations herein are based on the information and belief of representatives of Tom Brier for Congress and are made under penalty of perjury.

² <https://twitter.com/AlexClearfield/status/1110668016524627968>

³ "DePasquale Mulls Next Step, Possibly Congress," at <http://www.politicspa.com/depasquale-mulls-next-step-possibly-congress/90769/>.

⁴ "Ahead of rumored run for Congress, DePasquale drops campaign cash on Facebook ads," at <https://www.penncapital-star.com/government-politics/ahead-of-rumored-run-for-congress-depasquale-drops-campaign-cash-on-facebook-ads/>.

⁵ A review of DePasquale's Facebook ad library shows that the ads began on April 2, and they contain phrases like, "Sign on to stand with Eugene DePasquale and protect PA children!" and "Eugene DePasquale is shining a light on the prescription drug system to help Pennsylvania lower drug prices." and "I recently released a special report calling for increased oversight of pharmacy benefit managers raking in huge profits at the expense of people whose

DePasquale's nonfederal committee had not spent any funds on such social media ads in the 28-month period following his 2016 election. *Id.* Thus, the ad purchases directly coincided with reports indicating DePasquale's intention to seek the 10th District congressional seat. *Id.*

On May 22, 2019, DePasquale changed the name of his Facebook campaign page from "Eugene DePasquale for Pennsylvania" to "Eugene A. DePasquale," which has been the title of his congressional campaign page ever since. *Id.* Three days later, on May 25, 2019, he paid several thousand dollars for twelve new Facebook advertisements, a number of which asked users to submit their contact information. *Id.* One of the ads also included a picture that DePasquale later made the background picture on his congressional campaign Facebook page. *Id.*

Less than a week later, on May 31, 2019, *PennLive* reported that "[s]peculation about [DePasquale seeking] a Congressional bid steadily increased through the just-closed primary season, as DePasquale made the lion's share of his political appearances, according to his personal Facebook page, in 10th District communities."⁶

These reports were confirmed a few weeks later, on June 25, 2019, when *Pennlive* published another article stating that DePasquale had reportedly told fellow Democrats that he planned to run for the 10th District seat and that he planned to announce his candidacy in July.⁷ Days later, on June 30, 2019, DePasquale revealed on Twitter that, on July 1, he would indeed "file my paperwork to run for #Congress" (and he included a campaign ad with "Eugene DePasquale for Congress" language).⁸

B. DePasquale's October 2019 Campaign Finance Report

DePasquale's improper use of nonfederal funds was further clarified on October 25, 2019, when he filed his nonfederal campaign finance report.⁹ A review of that report reveals that

health depend[sic] on the medication that is increasingly difficult, if not impossible to afford." and "Eugene DePasquale for Pennsylvania." *See*

https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&q=Eugene%20A.%20DePasquale&view_all_page_id=105821344592.

⁶ "Pa. Auditor General Eugene DePasquale 'leaning' toward Congressional run: Source," at

<https://www.pennlive.com/news/2019/06/pa-auditor-general-eugene-depasquale-leaning-toward-congressional-run-source.html>.

⁷ "Pa. Auditor General plans run for Congress, Democrats say," at <https://www.pennlive.com/news/2019/06/pa-auditor-general-plans-run-for-congress-democrats-say.html>.

⁸ "Auditor General Eugene DePasquale is Running for Congress," July 1, 2019, at <https://wnep.com/2019/07/01/auditor-general-depasquale-is-running-for-congress/>.

⁹ See Oct. 25, 2019, Campaign Finance Report, available at

<https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=314045&isStatement=0&is24Hour=0>.

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during a two-month period between March 2019 and May 2019, DePasquale paid \$113,050 to several political firms for services that, by all indications, related directly to his federal campaign. These costs are listed below.

Date	Recipient	Cost	Description
March 5, 2019	Rising Tide Interactive	\$6,000	“Retainer”
March 5, 2019	Think Big Campaigns	\$2,000	“Website”
March 13, 2019	Stanford Campaigns	\$5,000	“Research”
March 22, 2019	Rising Tide Interactive	\$6,000	“Retainer”
April 1, 2019	Rising Tide Interactive	\$23,000	“Media”
April 1, 2019	Stanford Campaigns	\$5,000	“Research”
April 1, 2019	Jackson Media Group	\$22,000	“Media Production/Consulting”
April 1, 2019	Think Go Big ¹⁰	\$2,000	“Website”
April 11, 2019	Everyaction Inc	\$4,050	“Software”
April 22, 2019	Rising Tide Interactive	\$23,000	“Media”
May 10, 2019	Think Big Campaigns	\$2,000	“Website”
May 10, 2019	Jackson Media Group	\$11,000	“Video Production”
May 13, 2019	Think Big Campaigns	\$2,000	“Website”

i. Rising Tide Interactive

Between March 5, 2019, and April 22, 2019, DePasquale’s nonfederal committee paid a total of \$58,000 to Rising Tide Interactive, a “full-service digital marketing agency” that specializes “in a range of services including advertising, social media, email fundraising, video,

¹⁰ Think Go Big appears to be synonymous with Think Big Campaigns, the website of which is www.thinkgobig.com.

and creative design.”¹¹ Of the \$58,000 paid to Rising Tide Interactive during this time period, \$12,000 was for a “retainer” fee and the remaining \$42,000 was for “media.”

Several facts demonstrate that DePasquale’s nonfederal committee improperly hired Rising Tide Interactive for federal services. First, as noted above, DePasquale spent roughly \$24,000 on Facebook ads beginning April 2, 2019—just one day after he paid Rising Tide a \$23,000 “Media” fee and less than a month after he paid Rising Tide two separate \$6,000 retainer fees. These payments were followed by another \$23,000 payment for “Media” services on April 22.

Second, DePasquale is termed out as Auditor General, and thus had no incentive to pay for media services related to securing reelection in that position.

Third, DePasquale had never before partnered with Rising Tide Interactive during his thirteen-year political career, thus negating any suggestion of an existing relationship between the parties.

And fourth, DePasquale’s federal campaign committee has paid Rising Tide Interactive a total of \$17,446 since July 1, thus confirming that Rising Tide’s services were in fact related to his federal campaign.

To summarize, on April 1, 2019 -- just six days after it was reported that he might be running for Congress -- DePasquale used his nonfederal committee to pay \$23,000 to Rising Tide Interactive, a digital services company with whom he had no prior relationship. The next day, on April 2, DePasquale launched a full-fledged digital media ad campaign. Over the course of a six-week span between March 5, 2019, and April 22, 2019, DePasquale paid Rising Tide Interactive a total of \$58,000.

ii. Think Big Campaigns

Between March 5, 2019, and May 13, 2019, DePasquale’s nonfederal committee paid a total of \$8,000 to Think Big Campaigns, a consulting firm that “plan[s] and execute[s]” digital campaign strategy with a specific focus on “email, website, [and] online ad[vertisements].”¹² As described in DePasquale’s nonfederal campaign finance report, DePasquale made four separate \$2,000 payments that were each categorized as a “website” expense.

The payments made by DePasquale’s nonfederal committee to Think Big Campaigns appear to be related to his federal campaign because, at the time the payments were made,

¹¹ <https://www.risingtideinteractive.com/who-we-are/>

¹² <https://thinkgobig.com/focus-areas/>

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DePasquale did not operate a nonfederal campaign website; indeed, based on a search of Internet archives, it appears that DePasquale shut down his Auditor General campaign page, www.eugene4pa.com, in early March 2019.¹³

On July 1, 2019 -- the day DePasquale announced his campaign for Congress -- he launched a new website, www.eugeneforcongress.com. Since then, DePasquale's federal campaign committee has paid Think Big Campaigns on a monthly basis for a total of \$8,467.31 for "web services" and "site rental" services.¹⁴

iii. Stanford Campaigns

On March 13, 2019, and April 1, 2019, DePasquale's nonfederal committee made two separate \$5,000 payments to "Stanford Campaigns," which describes itself as a "leading opposition research firm headquartered in Austin, TX."¹⁵ Each \$5,000 payment was for "research."

As noted above, DePasquale is termed-out as Auditor General, and thus the \$10,000 in research costs could not have been related to a reelection campaign for that seat. More importantly, the March 13, 2019, payment to Stanford Campaigns occurred only one week after DePasquale contracted with Rising Tide Interactive and Think Big Campaigns for media and website-related services, both of which continue to provide services to DePasquale's federal campaign. The timing of the transactions therefore makes clear that DePasquale's payment of \$10,000 to Stanford Campaigns was also related to his decision to run for Congress. To be sure, there is no evidence to suggest otherwise.

iv. Jackson Media Group

On April 1, 2019, and May 10, 2019, DePasquale's nonfederal committee paid a total of \$33,000 for "media production/consulting" and "video production" services to Jackson Media Group, which bills itself as a "Television/Online Video/Radio Production" firm that "offers a full-range of . . . services for advertising on all communication mediums."¹⁶

The services paid to Jackson Media Group by DePasquale's nonfederal campaign committee were clearly for federal campaign purposes because the video posted by DePasquale on social media at the time he announced his candidacy for Congress is also listed by Jackson

¹³ https://web.archive.org/web/2019*/eugene4pa.com

¹⁴

https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00710533&recipient_name=Think+Big+campaigns&two_year_transaction_period=2020

¹⁵ <https://oppresearch.com/services>

¹⁶ <https://www.jacksongroupmedia.com/our-services>

Media Group on its website.¹⁷ Considering that DePasquale’s federal campaign committee paid Jackson Media Group only \$2,085 -- once on July 19, 2019, for \$1,900 and again on September 17, 2019, for \$185 -- it is clear that the \$33,000 spent by DePasquale’s nonfederal committee covered the bulk of the production costs for DePasquale’s announcement video.

v. **Everyaction Inc.**

On April 11, 2019, DePasquale’s nonfederal campaign committee paid \$4,050 to Everyaction Inc, a software company that provides “digital, fundraising, and organizing tools” to political campaigns.¹⁸ Because DePasquale had never before contracted with Everyaction, Inc prior to April 11, it is only reasonable to conclude that the one-time payment made by DePasquale’s nonfederal campaign committee was for fundraising services related to his congressional campaign.

2. **Applicable Law**

The Federal Election Commission (“FEC”) has rules in place to prevent the very type of conduct that DePasquale engaged in here -- circumventing contribution restrictions and reporting requirements by using nonfederal campaign funds for federal campaign activities.

First, as the FEC has explained in its plain-English *Campaign Guide for Congressional Candidates* (FEC 2014) (“Guide”), a federal candidate’s campaign is obligated to use only funds subject to the federal contribution limits and source prohibitions.¹⁹ Because many states, like Pennsylvania, do not have restrictions on contributions like these, the FEC has adopted a strict ban on transferring funds or providing assets from a person’s nonfederal campaign to a candidate’s federal campaign account.²⁰ While the FEC temporarily suspends registration and reporting obligations for someone who is genuinely “testing the waters,” the rules make emphatically clear that “all funds raised and spent during the testing the waters period must comply with the Federal Election Campaign Act’s contribution limits and prohibitions.”²¹ Because of the restrictions just cited, Eugene DePasquale was prohibited from using his nonfederal campaign committee’s funds for services that were plainly related to testing the

¹⁷ See <https://www.facebook.com/105821344592/posts/10157290832409593/?vh=e&d=n>; <https://www.jacksongroupmedia.com/>

¹⁸ <https://www.everyaction.com/about>

¹⁹ See Guide at pp. 13, 17, 31.

²⁰ See Guide, p. 61 (citing 11 C.F.R. 110.3(d)).

²¹ See Guide, p. 1.

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waters for the 10th District race and to his actual campaign once his spending triggered “candidate” status.²²

FEC rules also require that persons who actually become a “candidate” must file a Statement of Candidacy within 15 days, and must within 10 days thereafter file a Statement of Organization for the principal campaign committee.²³ DePasquale’s disbursements to several major political firms in early March, combined with his sudden spending in April on social media ads that focused on the 10th District and entailed self-promotion regarding issues of great interest at the federal policy level (*e.g.*, drug pricing), clearly indicate that he had decided to be a candidate as of that moment. By the same token, he clearly crossed the \$5,000 “candidate” threshold the day he paid Rising Tide Interactive a \$6,000 retainer fee on March 5, 2019. Because DePasquale was a “candidate” as of that date, it follows that his Statement of Candidacy was required by at least March 19, and his Statement of Organization was required by at least March 29. He thus violated the registration/reporting rules of the FEC.²⁴

3. Conclusion

Based on the foregoing, Complainant respectfully requests that the FEC review the relevant materials, find reason to believe violations of the contribution restrictions and registration/reporting rules have occurred, conduct a thorough investigation, impose penalties, mandate repayment of misappropriated funds totaling at least \$113,050, and secure an agreement from DePasquale and his committees not to repeat any of the foregoing transgressions of the law.

Sincerely,



Scott E. Thomas
Partner

²² A review of the DePasquale nonfederal campaign committee reports demonstrates numerous contributions from prohibited sources under federal campaign finance law (union contributions in particular). *See* Pennsylvania Department of State website search link at <https://www.campaignfinanceonline.pa.gov/pages/CFReportSearch.aspx>.

²³ *See* Guide at p.5.

²⁴ Federal campaign finance law prohibits a candidate from directing, transferring, or spending funds in connection with a federal campaign unless the funds are subject to the limits, prohibitions, and reporting requirements of federal law. 52 U.S.C. 30125(e)(1)(A); 11 C.F.R. 300.61 and 300.71; Guide, p. 157. If DePasquale directed the spending of his nonfederal campaign committee for the social media ads noted in this complaint after he became a federal candidate, he would have committed a distinct violation of law under these provisions.