



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

Thomas A. Willis, Esq.  
Andrew Werbrock, Esq.  
Remcho, Johansen & Purcell, LLP  
1901 Harrison Street  
Suite 1550  
Oakland, CA 94612

DEC 13 2016

RE: MUR 7072  
Amerish "Ami" Bera  
Ami Bera for Congress and Jennifer May in  
her official capacity as treasurer

Dear Messrs. Willis and Werbrock:

On May 26, 2016, the Federal Election Commission notified your clients, Amerish "Ami" Bera and Ami Bera for Congress and Jennifer May in her official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, information supplied by you, and other information, the Commission, on December 6, 2016, voted to dismiss this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016).

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in dark ink, appearing to read "Mark Allen".

Mark Allen  
Assistant General Counsel

Enclosure  
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Amerish "Ami" Bera  
Ami Bera for Congress and Jennifer May  
in her official capacity as treasurer

MUR: 7072

**I. INTRODUCTION**

The Complaint in this matter is based on a guilty plea filed in Federal District Court by Babulal Bera, father of U.S. Representative Amerish "Ami" Bera ("Rep. Bera"), in which Babulal Bera admitted making approximately \$270,000 in contributions in the names of about 90 other individuals to Ami Bera for Congress (the "Committee") during the 2010 and 2012 election cycles.<sup>1</sup> Based on this plea, the Complaint alleges that Rep. Bera and the Committee accepted illegal contributions by failing to timely refund the contributions to their original source.<sup>2</sup> Rep. Bera and the Committee state that they had no knowledge of Babulal Bera's illegal contributions at the time they were made and assert that the Committee properly disgorged the total amount on the same day as Babulal Bera's guilty plea.

As set forth below, under the circumstances here, the Commission dismisses the Complaint as to Rep. Bera and the Committee. *See Heckler v. Chaney*.<sup>3</sup>

**II. FACTUAL BACKGROUND**

Representative Ami Bera (CA-7) ran unsuccessfully for Congress in 2010, won his seat in 2012, and was re-elected in 2014 and 2016. On May 10, 2016, Babulal Bera pleaded guilty to violating 52 U.S.C. §§ 30116(a)(1)(A) and 30122 by making contributions in the names of others

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<sup>1</sup> Compl. at 1, Ex. A (May 23, 2016). Ami Bera for Congress is Ami Bera's principal campaign committee.

<sup>2</sup> *Id.* at 1.

<sup>3</sup> 470 U.S. 821 (1985).

1 and making excessive contributions during the 2010 and 2012 election cycles.<sup>4</sup> According to the  
2 Factual Basis for Pleas, Babulal Bera reimbursed approximately 90 contributors who made more  
3 than 130 contributions to the Committee.<sup>5</sup>

4 The Factual Basis for Pleas states that, during the 2010 election cycle, Babulal and Kanta  
5 Bera each made the maximum allowable contribution to the Committee for the primary and  
6 general elections — then a total of \$4,800 — between April 4, 2009, and May 4, 2009.<sup>6</sup> Babulal  
7 Bera then “directly and indirectly solicited relatives, friends and acquaintances to make the  
8 maximum allowable federal campaign contribution [to the Committee], with the understanding  
9 that he would reimburse them in whole or in part.”<sup>7</sup> From approximately May 11, 2009, through  
10 at least August 20, 2010, these individuals contributed a total of approximately \$225,326 to the  
11 Committee.<sup>8</sup> Babulal Bera provided full or partial refunds to these individuals totaling more than  
12 \$220,000.<sup>9</sup>

13 According to the Factual Basis for Pleas, Babulal Bera conducted a similar scheme  
14 during the 2012 election cycle.<sup>10</sup> On approximately January 5, 2011, Babulal and Kanta Bera  
15 each contributed the maximum allowable amount for the primary and general elections — then  
16 \$5,000 — to the Committee. Babulal Bera again solicited family, friends, and acquaintances to  
17 make the maximum allowable contribution to the Committee with the understanding that he

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<sup>4</sup> Plea Agreement, *United States v. Bera*, No. 2:16-cr-00097 (E.D. Cal. May 10, 2016) (“Plea Agmt.”). On August 18, 2016, Babulal Bera was sentenced to a prison term of one year and one day, supervised release for a term of 36 months, and a criminal fine of \$100,000. Judgment, *United States v. Babulal Bera*, No. 2:16-cr-00097 (E.D. Cal. Aug. 18, 2016).

<sup>5</sup> Plea Agmt. Ex. A (Factual Basis for Pleas).

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

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

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

1 would reimburse the conduits for their donations.<sup>11</sup> The plea agreement indicates that from at  
2 least January 31, 2011, through at least December 5, 2011, these individuals contributed a total  
3 of approximately \$43,400 to the Committee.<sup>12</sup> Between April 26, 2011, and at least June 9,  
4 2012, these individuals received full reimbursements for their contributions from Babulal Bera,  
5 which were delivered either by Babulal Bera himself or through third parties working at his  
6 behest.<sup>13</sup> The Factual Basis for Pleas indicates that at least some of the reimbursement checks  
7 were drawn on Babulal Bera's business accounts.<sup>14</sup>

8 On May 10, 2016, the same day as Babulal Bera's guilty plea, the Committee paid  
9 \$268,726 to the United States Treasury to disgorge the illegal contributions.<sup>15</sup> The same day,  
10 Rep. Bera issued a statement through the Committee, asserting that "[n]either I, nor anyone  
11 involved with my campaign, was aware of my father's activities until we learned about them  
12 from the U.S. Attorney's Office."<sup>16</sup>

13 The Complaint contends that Rep. Bera became aware of the investigation in October  
14 2015 when DOJ interviewed him about his father's fundraising activities.<sup>17</sup> Complainant asserts  
15 that Rep. Bera and his Committee had an obligation under the Act to refund the illegal

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Information ¶13, *United States v. Babulal Bera*, No. 2:16-cr-00097 (E.D. Cal. May 9, 2016) ("Information").

<sup>14</sup> Plea Agmt. Ex. A.

<sup>15</sup> See 2016 Pre-Primary Report at 432, *Ami Bera for Congress* (June 7, 2016).

<sup>16</sup> Press Release by Ami Bera for Congress, *Rep. Bera Statement on Campaign Finance Violation* (May 10, 2016), <http://www.beraforcongress.com/press/rep-bera-statement-campaign-finance-violation>.

<sup>17</sup> Compl. at 1-2.

1 contributions to the original source of the funds as soon as it learned of the investigation against  
2 Rep. Bera's parents.<sup>18</sup>

3 In a joint response, Rep. Bera and the Committee assert that they were unaware of the  
4 illegal conduct at the time it occurred and "only learned of the specific violations when the  
5 Information was issued" on May 9, 2016.<sup>19</sup> Rep. Bera and the Committee acknowledge that DOJ  
6 interviewed Rep. Bera in October 2015, but state that during the interview, DOJ asked only  
7 about Babulal Bera's fundraising activities for the campaign and "as is typically the case with  
8 criminal investigations, the Department of Justice did not disclose the full details of its  
9 investigation."<sup>20</sup> The Response also asserts that DOJ did not provide Rep. Bera or the  
10 Committee with "any actionable information about Babulal Bera's activities that would have  
11 allowed them to immediately disgorge the illicit contributions" and that Rep. Bera has not been  
12 given a list of specific contributors whose contributions were allegedly reimbursed or the  
13 amounts or dates of those contributions.<sup>21</sup>

14 According to press accounts, DOJ announced on September 16, 2016, that no other  
15 charges would be sought in the Babulal Bera matter.<sup>22</sup>

### 16 III. LEGAL ANALYSIS

17 In the 2010 election cycle, the Act prohibited an individual from making contributions to  
18 a candidate which, in the aggregate, exceeded \$2,400 per election.<sup>23</sup> In the 2012 cycle, the

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<sup>18</sup> *Id.* at 1.

<sup>19</sup> Committee Resp. at 2.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> See Denny Walsh, *No Election Fraud Charges Against Ami Bera, Says U.S. Justice Department*, SACRAMENTO BEE, Sept. 16, 2016, available at <http://www.sacbee.com/news/local/crime/article102224787.html>.

<sup>23</sup> 52 U.S.C. § 30116(a)(1)(A).

1 contribution limit was \$2,500 per election.<sup>24</sup> The Act further provides that no person shall make  
2 a contribution in the name of another or knowingly permit his name to be used to effect such a  
3 contribution, and that no person shall knowingly accept a contribution in the name of another.<sup>25</sup>

4       The Complaint alleges that Rep. Bera and the Committee violated the Act by failing to  
5       timely refund the illegal contributions to their original source, resulting in the receipt of an  
6       excessive contribution.<sup>26</sup>

7           The Commission has determined as a matter of prosecutorial discretion not to further  
8   pursue this matter in view of the lack of information directly suggesting that Respondents had  
9   knowledge of Babulal Bera's contributions in the name of another prior to his guilty plea, the  
10   Committee's \$268,726 disgorgement on the same day as the plea, and that the statute of  
11   limitations on most of the activity here has run.<sup>27</sup> Under these circumstances, the Commission  
12   dismisses the Complaint as to Rep. Bera and the Committee. *See Heckler v. Chaney*.<sup>28</sup>

<sup>24</sup> *Id.* See 11 C.F.R. 110.1(b)(1).

<sup>25</sup> 52 U.S.C. § 30122.

<sup>26</sup> Compl. at 1. Commission regulations provide that if a political committee accepts contributions, which at the time did not appear to be made in the name of another, but which it later discovers are illegal based on new evidence not available to the committee at the time of receipt and deposit, the committee shall refund the contribution to the contributor within thirty days of the date on which the illegality is discovered. 11 C.F.R. § 103.3(b)(2).

<sup>27</sup> The statute of limitations has run on the entire \$220,000 in violation during the 2010 election cycle. As for the \$43,400 in violation from the 2012 election cycle, the plea materials provide a general range of dates and do not identify specific contributions, but it appears that a substantial portion of that activity is now also beyond the statute of limitations.

<sup>28</sup> 470 U.S. 821 (1985).