



FEDERAL ELECTION COMMISSION
Washington, DC 20463

Allen H. Mattison, Esq.
Trister, Ross, Schadler and Gold, PLLC
1666 Connecticut Ave NW # 5
Washington, DC 20009

SEP 25 2017

RE: MUR 7081
Floridians for a Strong Middle Class
and Jennifer May in her official
capacity as treasurer

Dear Mr. Mattison:

On June 14, 2016, the Federal Election Commission ("Commission") notified your clients Floridians for a Strong Middle Class and Jennifer May in her official capacity as treasurer ("Respondents") of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended ("Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint and information provided by Respondents, the Commission determined to dismiss this matter. The Commission closed the file on September 20, 2017. The Factual and Legal Analysis, which more fully explains the basis for the Commission's decision, is enclosed.

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), effective September 1, 2016.

If you have any questions, please contact Saurav Ghosh, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Shonkwiler".

Mark Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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1 FEDERAL ELECTION COMMISSION

2 FACTUAL AND LEGAL ANALYSIS

3 RESPONDENTS: Floridians for a Strong Middle Class and MUR 7081
4 Jennifer May in her official capacity as treasurer,
5 Nicholas A. Mastroianni II,
6 230 East 63rd -6 Trust, LLC,
7 Pride United Limited Partnership,
8 Chic Boutique, LLC,
9 Mark Giresi,
10 Rep. Patrick Murphy

11
12 I. GENERATION OF MATTER

13 This matter was generated by a complaint filed with the Federal Election Commission
14 (“Commission”) by Howard Klein. *See* 52 U.S.C. § 30109(a)(1). Complainant alleges that
15 Nicholas Mastroianni, a real estate developer whose projects have been financed by foreign
16 nationals through the EB-5 federal visa program, arranged for foreign nationals to contribute
17 \$50,000 through a conduit limited liability company (“LLC”), 230 East 63rd -6 Trust, LLC, to
18 Floridians for a Strong Middle Class (“FSMC”), an independent-expenditure-only political
19 committee supporting Rep. Patrick Murphy’s campaign for the U.S. Senate in Florida. The
20 Complaint further alleges that FSMC knowingly accepted these prohibited contributions. In
21 addition, the Complaint alleges that Chic Boutique, LLC, which is also linked to Mastroianni,
22 contributed \$5,000 in the name of another to FSMC, and that Pride United, a dissolved Florida
23 limited partnership, made a \$20,000 contribution in the name of another to FSMC. The
24 Complaint contends that these contributions to FSMC were made in exchange for Murphy’s
25 support of the EB-5 visa program. Respondents deny the allegations.

26 Because the evidence available in the record before the Commission does not provide a
27 sufficient evidentiary basis to establish that the contributions at issue were foreign national

1 contributions or contributions in the name of another, the Commission exercises its prosecutorial
2 discretion to dismiss the allegations in this matter.¹

3 **II. FACTUAL AND LEGAL ANALYSIS**

4 **A. Background**

5 The allegations raised in the Complaint center on a Florida real estate developer,
6 Nicholas Mastroianni, and his use of the EB-5 federal visa program.² The Complaint alleges
7 that, beginning in 2010, Mastroianni used the EB-5 program to obtain financing from Chinese
8 nationals for his development projects.³ The Complaint also contends that since 2010,
9 Mastroianni has been a prominent political supporter of candidates and officeholders that support
10 the EB-5 program, including Florida Rep. Patrick Murphy.

11 The Complaint alleges that Mastroianni used funds obtained from a Chinese national to
12 make contributions to FSMC, a Super PAC supporting Murphy's campaign for the U.S. Senate
13 in Florida, through a conduit LLC that was previously used to purchase and hold real estate.⁴
14 Specifically, the Complaint avers that on February 14, 2014, Mastroianni registered an entity in
15 Florida, 230 East 63rd -6 Trust, LLC, listing himself as that entity's manager. That LLC then

¹ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

² Under the program, foreign nationals can qualify for an EB-5 visa, which grants conditional permanent resident status for a two-year period, by investing at least \$1 million (or, in certain high-unemployment or rural areas, at least \$500,000) in a U.S. commercial enterprise that results in the creation of at least ten full-time jobs for qualifying U.S. workers within two years. After the two-year period, if the conditions of the visa are met, the foreign national is granted unconditional permanent resident status. See EB-5 Adjudications Policy Memorandum, U.S. Citizenship and Immigration Services (May 30, 2013), <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2013/May/EB-5%20Adjudications%20PM%20%28Approved%20as%20final%205-30-13%29.pdf>.

³ Compl. at 2 (June 4, 2016) (citing Peter Elkind and Marty Jones, *The Tangled Past of the Hottest Money-Raiser in America's Visa-For-Sale Program*, FORTUNE (Oct. 14, 2014) ("Mastroianni's website boasts of involvement with \$5.5 billion in development projects over the years, funded with \$1.4 billion in EB-5 money, resulting in "40,000 jobs created." Those are massive sums given that the entire EB-5 system raised a total of about \$1.8 billion last year.")).

⁴ Compl. at 3.

1 purchased a penthouse apartment in New York on October 30, 2014, for approximately \$3.75
2 million. Based on two news articles discussing the practice of foreign nationals to purchase
3 Manhattan real estate, the Complaint speculates that Mastroianni bought the apartment through
4 the LLC for a Chinese national involved with the EB-5 program, with funds provided by that
5 person.⁵ Mastroianni then dissolved the LLC on April 22, 2015.

6 According to the Complaint, Mastroianni made two contributions to FSMC totaling
7 \$50,000 on September 2, 2015, in the name of the dissolved entity, 230 East 63rd -6 Trust, LLC.⁶
8 Complainant alleges that because the LLC engaged in no known business other than purchasing
9 the apartment on behalf of a Chinese national, the contributions to FSMC in the name of the LLC
10 actually came from a Chinese national or from Mastroianni himself, such that they were foreign
11 national contributions or contributions in the name of another (or both).⁷

12 The Complaint further avers that FSMC knowingly accepted these illegal contributions
13 because the committee "should have known the \$50,000 in contributions from 230 East 63rd -6
14 Trust, LLC were suspicious[,] based largely on the fact that it was "already well known in
15 Florida at the time" that Mastroianni had been sued for fraudulent use of foreign investment
16 capital raised under the EB-5 program.⁸

⁵ *Id.* at 4. Relying on news articles published in mid-2014, the Complaint states that "it was well-known that crooked business people and corrupt politicians from all over the world" were buying real estate in the U.S. to launder money, and that "Chinese foreign nationals made up the majority of the foreign investors using this method" to purchase high-end property in Manhattan. *Id.* at 3-4 (citing Hudson, Stanescu, and Adler-Bell, How New York Real Estate Became a Dumping Ground for the World's Dirty Money, THE NATION (July 3, 2014) ("New York is a magnet for the super-rich homebuyers from other lands bearing money of sometimes dubious provenance."); Mike Segar, In Real Estate, the Chinese Take Manhattan, REUTERS (Apr. 25, 2014)).

⁶ See FSMC 2015 Year-End Report at 6 (Jan. 31, 2016); Compl. at 4. 230 East 63rd -6 Trust, LLC has not made any other contributions. The Complaint incorrectly states that the contributions were both made on Sept. 2, 2015; the contributions were actually made on Sept. 2, 2015 and December 14, 2015.

⁷ Compl. at 4.

⁸ *Id.*

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1 The Complaint also refers to two other instances when FSMC allegedly accepted
2 contributions in the name of another. First, Chic Boutique, LLC, an entity used to operate a
3 clothing store located in a Mastroianni development and managed by Mark Giresi, the general
4 counsel for one of Mastroianni's development companies, gave \$5,000 to FSMC in September
5 2015. Second, Pride United, a Florida limited partnership that was apparently dissolved in
6 September 2015, purportedly contributed \$20,000 to FSMC in December 2015.⁹

7 Nicholas A. Mastroianni II, Mark Giresi, and Chic Boutique, LLC contend that "230 East
8 63rd -6 Trust, LLC," the entity that contributed to FSMC, is an active Delaware LLC, while a
9 Florida LLC with the same name and registration date, February 14, 2014, was dissolved in April
10 2015.¹⁰ The Response clarifies that the Delaware LLC purchased the \$3.75 million Manhattan
11 apartment on October 30, 2014,¹¹ and later made contributions totaling \$50,000 to FSMC on
12 September 2, 2015, and December 14, 2015.¹² The Florida LLC did not make contributions to
13 FSMC.¹³ In addition, the Response contends that the Complaint provides no basis for the
14 allegation that the contribution from Chic Boutique was a contribution in the name of another.¹⁴

⁹ *Id.* at 4-5.

¹⁰ Mastroianni Resp. at 1-2, Ex. 1 (July 22, 2016).

¹¹ *See* Compl. Ex. 4 at 9 ("Certification Page") indicating that 230 East 63rd -6 Trust, LLC is "a Delaware limited liability company" and signed by Mastroianni; the LLC's address is listed as "1295 U.S. Highway 1, North Palm Beach, Florida 33408." This is the same address listed for Mastroianni as "Manager" of the Florida LLC.

¹² *See Mastroianni Resp.* at 2; *FSMC 2015 Year-End Report at 6* (Jan. 31, 2016).

¹³ The Mastroianni Response also attaches a letter dated March 17, 2016, from Mastroianni, by counsel, to a Florida news outlet, the "Florida Bulldog," which apparently published a story raising many of the same allegations raised in the Complaint. In that letter, Mastroianni clarified that "the Delaware Entity made contributions in the amount of \$25,000 to [FSMC] on September 2, 2015 and December 14, 2015. . . . There was a Florida Entity that was incorporated on the same day as the Delaware Entity and was later administratively dissolved, but that Florida Entity had nothing to do with contributions to [FSMC]." Mastroianni Resp. Ex. C at 2.

¹⁴ Mastroianni Resp. at 3.

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1 Pride United Limited Partnership (“Pride”) contends that it is a limited partnership that
2 was established in December 1996 by the named partners of a Florida law firm, to hold title to
3 the office building where the firm is located, and that the entity principally earns income from
4 the rent paid by the law firm for leasing that office building.¹⁵ Pride denies being a shell
5 company or conduit entity, and denies receiving any outside funds provided for the purpose of
6 making political contributions. It asserts that any contributions that Pride made came from the
7 revenue it earned “in the ordinary course of its long-standing business activities.”¹⁶ Pride also
8 contends that although it was administratively dissolved in September 2015, as alleged in the
9 Complaint, that dissolution occurred “because of a failure to [timely] file an annual report” and,
10 when that report was filed, Pride was retroactively reinstated as permitted under Florida law.¹⁷

11 Floridians for a Strong Middle Class and Jennifer May in her official capacity as treasurer
12 (“FSMC”) contend that the allegations are speculative and unfounded. They argue that the
13 Complaint presents no evidence to support its claim that FSMC knowingly accepted foreign-
14 national contributions or contributions in the name of another.¹⁸ They note also that LLCs are
15 legally permitted to contribute to independent-expenditure-only committees like FSMC, and that
16 FSMC had no reason to suspect that any of the contributions at issue were improper.¹⁹ The
17 Response notes that the vast majority of LLCs used to buy or hold real estate or other assets are

¹⁵ Pride Resp. at 1 (July 25, 2016).

¹⁶ *Id.* at 2.

¹⁷ *Id.*

¹⁸ FSMC Resp. at 1-2 (Aug. 1, 2016).

¹⁹ *Id.* at 2.

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1 not part of a scheme to hide or launder foreign money, and that contributions from such entities
2 “are not inherently questionable[.]”²⁰

3 Rep. Patrick Murphy contends that because the allegations raised in the Complaint
4 pertain solely to contributions received by FSMC, not by his campaign, the Complaint raises no
5 claims against him or his campaign. Murphy also rejects the “naked speculation” that he
6 received campaign contributions in exchange for taking any official action, such as supporting
7 the EB-5 visa program or particular program applicants.²¹

8 **B. Factual and Legal Analysis**

9 **1. Foreign National Contributions**

10 **(i) Legal Standard**

11 The Federal Election Campaign Act of 1971, as amended (“Act”), prohibits any “foreign
12 national” from “directly or indirectly” making a contribution or donation of money or any other
13 thing of value in connection with a Federal, State, or local election.²² “Foreign national”
14 includes anyone who “is not a citizen of the United States or a national of the United
15 States . . . and who is not lawfully admitted for permanent residence[.]”²³

16 It is also unlawful for any person to “*knowingly* solicit, accept or receive” a contribution

²⁰ *Id.* at 3.

²¹ Murphy Resp. at 1 (Aug. 4, 2016).

²² 52 U.S.C. § 30121(a)(1); *see* 11 C.F.R. § 110.20(b)-(c). Courts have consistently upheld the provisions of the Act prohibiting foreign-national contributions, on the ground that the government has a clear, compelling interest in limiting the influence of foreigners over activities and processes integral to democratic self-government, which include making political contributions or express-advocacy expenditures. *See Bluman v. FEC*, 800 F. Supp. 2d 281, 288-89 (D.D.C. 2011), *aff’d* 132 S. Ct. 1087 (2012).

²³ 52 U.S.C. § 30121(b); *see* 11 C.F.R. § 110.20(a)(3).

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1 or donation made by a foreign national.²⁴ The Commission has clarified that in order to
2 “knowingly” solicit, accept, or receive a foreign national contribution, a person must (1) have
3 actual knowledge that the source of the funds is a foreign national; (2) have reason to know that
4 the source of the funds is a foreign national, *i.e.*, be aware of facts that would lead a reasonable
5 person to conclude that there is a substantial probability that the source is a foreign national; or
6 (3) engage in “willful blindness,” *i.e.*, be aware of facts that would lead a reasonable person to
7 inquire further into the provenance of the funds, but fail to conduct a reasonable inquiry.²⁵ In
8 addition, the law prohibits anyone from knowingly providing “substantial assistance in the
9 solicitation, making, acceptance, or receipt of a contribution or donation” by a foreign national.²⁶

10 (ii) The Record Does Not Support the Inference that the Contributions
11 by 230 East 63rd -6 Trust, LLC to FSMC were Foreign National
12 Contributions under 52 U.S.C. § 30121

13 The evidence available in the record before the Commission does not support the
14 inference that the contributions made by 230 East 63rd -6 Trust, LLC to FSMC were foreign
15 national contributions. The record provides insufficient evidence to support its allegation that
16 Mastroianni organized or funded 230 East 63rd -6 Trust, LLC on behalf of, or with money
17 obtained from, foreign nationals. While Mastroianni may have used the EB-5 program to obtain
18 financing for other real estate projects from Chinese nationals, there are no facts that connect his
19 real estate development work to the creation or funding of 230 East 63rd -6 Trust, LLC, its
20 purchase of a Manhattan apartment, or its contributions to FSMC.

²⁴ 11 C.F.R. § 110.20(g) (emphasis added); *see* 52 U.S.C. § 30121(a)(2).

²⁵ 11 C.F.R. § 110.20(a)(4). *See* Contribution Limitations and Prohibitions, 67 Fed. Reg. 69928, 69941 (Nov. 19, 2002) (“The final rules at 11 CFR 110.20(a)(4) . . . contain three standards of knowledge, any one of which would satisfy the knowledge requirements: (1) Actual knowledge; (2) reason to know; and (3) the equivalent of willful blindness.”).

²⁶ 11 C.F.R. § 110.20(h)(1); *see* 52 U.S.C. § 30121.

1 Although the Complaint relies on news articles generally claiming that Chinese nationals
2 have been actively purchasing high-end real property in New York since 2014, these articles do
3 not refer to Mastroianni, 230 East 63rd -6 Trust, LLC, or the property at issue. The record does
4 not support the conclusion that this particular LLC was used to purchase this apartment on behalf
5 of, or with funds provided by, a foreign national, or that the funds contributed to FSMC were
6 provided by a foreign national or were otherwise derived from a foreign source for the purpose
7 of funding the contributions.

8 Correspondingly, the record does not support the conclusion that FSMC knowingly
9 accepted or received foreign national contributions. The funds at issue came from a domestic
10 entity formed under Delaware law, with an address in Florida. As FSMC asserts, “the
11 overwhelming majority of real estate LLCs are neither schemes to hide illegal contributions nor
12 are they foreign-owned entities[;]” furthermore, an LLC contributing funds to a committee is not
13 “inherently questionable[.]” and FSMC had no clear reason to question these contributions.²⁷

14 Accordingly, based upon the record before the Commission, the Commission exercises
15 its prosecutorial discretion to dismiss the allegations that 230 East 63rd -6 Trust, LLC,
16 Mastroianni, or FSMC violated 52 U.S.C. § 30121 or 11 C.F.R. § 110.20.

17 **2. Contributions in the Name of Another**

18 (i) Legal Standard

19 The Act provides that a contribution includes “any gift, subscription, loan, advance, or
20 deposit of money or anything of value made by any person for the purpose of influencing any

²⁷ FSMC Resp. at 3.

1 election for Federal office.”²⁸ The term “person” for purposes of the Act and Commission
2 regulations includes partnerships, corporations, and “any other organization or group of
3 persons.”²⁹ The law prohibits a person from making a contribution in the name of another
4 person, knowingly permitting his or her name to be used to effect such a contribution, or
5 knowingly accepting such a contribution.³⁰ The Commission has included in its regulations
6 illustrations of activities that constitute making a contribution in the name of another:

- 7 (i) Giving money or anything of value, all or part of which was provided to the
8 contributor by another person (the true contributor) without disclosing the
9 source of money or the thing of value to the recipient candidate or committee
10 at the time the contribution is made; or
- 11 (ii) Making a contribution of money or anything of value and attributing as the
12 source of the money or thing of value another person when in fact the
13 contributor is the source.³¹

14 The requirement that a contribution be made in the name of its true source promotes
15 Congress’s objective of ensuring the complete and accurate disclosure by candidates and
16 committees of the political contributions they receive.³² Courts therefore have uniformly
17 rejected the assertion that “only the person who actually transmits funds . . . makes the
18 contribution,”³³ recognizing that “it is implausible that Congress, in seeking to promote
19 transparency, would have understood the relevant contributor to be [an] intermediary who

²⁸ 52 U.S.C. § 30101(8)(A).

²⁹ *Id.* § 30101(11); 11 C.F.R. § 100.10.

³⁰ 52 U.S.C. § 30122.

³¹ 11 C.F.R. § 110.4(b)(2)(i)–(ii).

³² *United States v. O’Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) (“[T]he congressional purpose behind [Section 30122] — to ensure the *complete and accurate disclosure* of the contributors who finance federal elections — is plain.”) (emphasis added); *Mariani v. United States*, 212 F.3d 761, 775 (3d Cir. 2000) (rejecting constitutional challenge to Section 30122 in light of compelling governmental interest in disclosure).

³³ *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

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1 merely transmitted the campaign gift.”³⁴ Consequently, both the Act and the Commission’s
2 implementing regulations provide that a person who furnishes another with funds for the purpose
3 of contributing to a candidate or committee “makes” the resulting contribution.³⁵ This is true
4 whether funds are advanced to another person to make a contribution in that person’s name or
5 promised as reimbursement of a solicited contribution.³⁶ Because the concern of the law is the
6 true source from which a contribution to a candidate or committee originates, the Commission
7 will look to the structure of the transaction itself and the arrangement between the parties to
8 determine who in fact “made” a given contribution.³⁷

9 (ii) The Record Does Not Support the Inference that Mastroianni
10 Made, 230 East 63rd -6 Trust, LLC Knowingly Facilitated, or
11 FSMC Knowingly Accepted Contributions in the Name of Another
12 under 52 U.S.C. § 30122

13 The available record does not support the allegation that the contributions made by 230
14 East 63rd -6 Trust, LLC were contributions in the name of another under the Act. First, the
15 allegation that the entity that made the contributions had previously been dissolved appears to be
16 unfounded. The record indicates that two entities — both named “230 East 63rd -6 Trust, LLC”
17 — were organized on the same day, February 14, 2014; one was organized in Florida, while the
18 other was organized in Delaware. The Delaware entity appears to have purchased property in

³⁴ *O'Donnell*, 608 F.3d at 554.

³⁵ See *Boender*, 649 F.3d at 660 (holding that to determine who made a contribution “we consider the giver to be the source of the gift, not any intermediary who simply conveys the gift from the donor to the donee.” (emphasis added)); *O'Donnell*, 608 F.3d at 550; *Goland v. United States*, 903 F.2d 1247, 1251 (9th Cir. 1990) (“The Act prohibits the use of ‘conduits’ to circumvent . . . [the Act’s reporting] restrictions.” (quoting then-Section 441f)).

³⁶ *O'Donnell*, 608 F.3d at 555.

³⁷ As the court in *O'Donnell* acknowledged, the Commission’s earmarking regulations require the entire amount of a contribution to be attributed to both the actual source and the intermediary if the intermediary also exercises direction and control “over the choice of the recipient candidate.” 11 C.F.R. § 110.6(d); *O'Donnell*, 608 F.3d at 550 n.2. Those regulations, however, do not apply to contributions made to an independent-expenditure-only political committee, like the contribution at issue in this matter.

1 New York, and according to Delaware records, is still active. The Mastroianni Response asserts
2 that this Delaware LLC made \$50,000 in contributions to FSMC, and the available facts do not
3 contradict that claim. Florida records show that the Florida LLC, by contrast, was dissolved in
4 April 2015, and the document filed with the state effecting that dissolution suggests that the LLC
5 was dissolved because it had been mistakenly established in that state. The available facts
6 therefore indicate that the FSMC contributions were not falsely attributed to a dissolved entity.

7 In addition, the record contains no credible facts to support the inference that the funds
8 contributed to FSMC were provided to the LLC for the purpose of making a contribution. The
9 circumstantial facts in the record, viewed as a whole, suggest that the LLC was organized and
10 used for a commercial purpose, and that it likely would have had the financial means to make
11 \$50,000 in contributions without an infusion of outside funds provided to it for that specific
12 purpose. The LLC was established on February 14, 2014, or over 18 months before the first
13 contribution to FSMC on September 2, 2015. During that period, the LLC purchased a
14 Manhattan apartment for \$3.75 million. As such, the available record suggests that the LLC may
15 have made a contribution in its own name and was not organized and used as a conduit, and
16 FSMC did not knowingly accept a contribution in the name of another.

17 As such, the Commission exercises its prosecutorial discretion to dismiss the allegations
18 that Nicholas Mastroianni, 230 East 63rd -6 Trust, LLC, or FSMC violated 52 U.S.C. § 30122 .

19 (iii) The Available Record Does Not Support the Inference that Chic
20 Boutique, LLC was Not the True Contributor to FSMC under
21 52 U.S.C. § 30122

22 The record does not support the allegation that Mastroianni, Chic Boutique, LLC, or
23 Mark Giresi made or knowingly facilitated a contribution in the name of another. The available

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1 facts indicate that Chic Boutique was organized in Delaware on September 14, 2015.³⁸ The LLC
2 is managed by Mark and Lisa Giresi, and is apparently used to operate a retail clothing store
3 located at Harbourside Place, one of Mastroianni's Florida development projects.³⁹ Mark Giresi
4 also serves as General Counsel for the U.S. Immigration Fund, the EB-5 Regional Center
5 founded by Mastroianni.⁴⁰ In addition, Patricia Harris, a paralegal at U.S. Immigration Fund and
6 another Mastroianni-run company, Allied Capital and Development of South Florida, LLC, is
7 listed as a point of contact on Chic Boutique's application to conduct business in Florida as a
8 "foreign" LLC, *i.e.*, an LLC organized outside of Florida.⁴¹ Chic Boutique was reported as
9 having made a \$5,000 contribution to FSMC on November 18, 2015.⁴²

10 Although the available record suggests that Mastroianni, Giresi, and Chic Boutique are
11 linked, it does not raise a reasoned inference that Chic Boutique was not the true contributor,
12 *i.e.*, that Mastroianni, Giresi, or another person provided or reimbursed funds to the LLC for it to
13 make a contribution. While the available record does not definitively establish how Chic
14 Boutique acquired the funds that it contributed to FSMC, circumstantial facts suggest that the
15 LLC likely made a contribution in its own name, as permitted under the law. Chic Boutique was
16 an active business entity, which could plausibly have made a \$5,000 contribution to FSMC in its

³⁸ CHIC BOUTIQUE, LLC, Delaware Entity Search Result, <https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx> (viewed Sept. 27, 2016).

³⁹ The LLC is referred to as Chic Boutique, LLC or under an alternative name, Chic Boutique Fashion, LLC. Both names are listed on its application to conduct business in Florida. *See* Compl. Ex. 12 at 4; *see also* Chic Boutique Fashion, <https://www.chicboutique.fashion> (viewed Sept. 27, 2016).

⁴⁰ *See* U.S. Immigration Fund, <http://visaeb-5.com/meet-the-team> (viewed Sept. 27, 2016).

⁴¹ *See* Compl. Ex. 12 at 2, 4; *see also* Allied Capital and Development of South Florida, <http://alliedcapitalanddevelopment.com/about-us/team> (viewed Sept. 27, 2016).

⁴² *See* Compl. at Ex. 11; FSMC 2015 Year-End Report at 8. Chic Boutique has not made any other contributions.

1 own name with funds that it earned through its retail business operations during the nine weeks
2 between its formation and the date of the contribution.⁴³ As such, there is also an insufficient
3 factual basis to infer that FSMC knowingly accepted a contribution in the name of another from
4 Chic Boutique. Accordingly, the Commission exercises its prosecutorial discretion to dismiss
5 the allegations that Mastroianni, Giresi, Chic Boutique, LLC, or FSMC violated 52 U.S.C.
6 § 30122.

7 (iv) The Available Record Does Not Support the Inference that Pride
8 United was Not the True Contributor to FSMC under 52 U.S.C.
9 § 30122

10 The record does not support the allegation that Pride United made a contribution in the
11 name of another. The Complaint essentially alleges that because Pride was dissolved before it
12 gave \$20,000 to FSMC, Pride was not the true contributor but was instead being used as a false
13 name for the contribution. Pride concedes that it was administratively dissolved on September
14 25, 2015, for failing to file a mandatory annual report, but argues that it remained active and was
15 retroactively reinstated after filing the missing report.⁴⁴

16 Although Pride had been dissolved and had not yet been reinstated at the time that it
17 made a contribution to FSMC on December 29, 2015, that fact by itself does not establish that
18 Pride was not the true contributor.⁴⁵ The available facts suggest that the Pride is an active

⁴³ Chic Boutique first transacted business in Florida on Oct. 10, 2015, or approximately five weeks prior to the FSMC contribution. *See Compl. Ex. 12 at 4.*

⁴⁴ Pride was reinstated on May 4, 2016, and such reinstatements apply retroactively under Florida law. FLORIDA LIMITED PARTNERSHIP REINSTATEMENT - PRIDE UNITED LIMITED PARTNERSHIP (May 4, 2016). *See Fla. Stat. § 620.1810* (“The reinstatement relates back to and takes effect as of the effective date of the administrative dissolution, and the limited partnership may resume its activities as if the administrative dissolution had never occurred.”).

⁴⁵ *See* FSMC 2015 Year-End Report at 13. Pride made one other contribution in this election cycle, giving \$2,700 to Ted Deutch for Congress Committee on September 30, 2015.

1 business entity that was dissolved based on a technical failure to comply with Florida law. It was
2 also apparently reinstated, with retroactive effect, as permitted under Florida law. Nothing in the
3 record suggests that another person provided funds to Pride for it to make a contribution. Pride
4 specifically maintains that “[t]he source of Pride contributions always is, and in this case was,
5 revenue received by Pride in the ordinary course of its long-standing business activities. It is not
6 and has never been a shell company or straw entity.”⁴⁶ The record also provides insufficient
7 support for the inference that FSMC knowingly accepted a contribution in the name of another
8 from Pride.

9 In light of Pride’s specific denial, and the lack of credible evidence supporting the
10 allegations, the Commission exercises its prosecutorial discretion to dismiss the allegations that
11 Pride or FSMC violated 52 U.S.C. § 30122.

12 (v) The Available Record Does Not Support the Allegations against
13 Murphy

14 There is insufficient factual support for the allegations raised against Rep. Patrick
15 Murphy. The complainant’s unsupported allegation that contributions were made in connection
16 with sponsored legislation, or that “official action” was taken in support of the EB-5 visa
17 program, in exchange for contributions to his U.S. Senate campaign committee or to FSMC,
18 raises legal violations outside the scope of the Act or Commission regulations. The record does
19 not suggest that Murphy communicated or coordinated with FSMC, and all of the contributions
20 at issue were made to FSMC, not Murphy’s campaign. Accordingly, the Commission exercises
21 its prosecutorial discretion to dismiss the allegations raised against Murphy in connection with
22 this matter.

⁴⁶ Pride Resp. at 2.