

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)
4)
5 MUR 7338) DISMISSAL AND
6 Rick for Congress and Brenda Hankins in her) CASE CLOSURE UNDER THE
7 official capacity as treasurer,) ENFORCEMENT PRIORITY
8 Friends of Rick Saccone and Nicolas Racculia) SYSTEM
9 in his official capacity as treasurer, and)
10 Rick Saccone)

11
12 **GENERAL COUNSEL'S REPORT**

13 Under the Enforcement Priority System, the Commission uses formal scoring criteria as a
14 basis to allocate its resources and decide which matters to pursue. These criteria include, without
15 limitation, an assessment of the following factors: (1) the gravity of the alleged violation, taking into
16 account both the type of activity and the amount in violation; (2) the apparent impact the alleged
17 violation may have had on the electoral process; (3) the complexity of the legal issues raised in the
18 matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as
19 amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing
20 relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial
21 discretion to dismiss cases under certain circumstances.

22 The Office of General Counsel has scored MUR 7338 as a low-rated matter and has
23 determined that it should not be referred to the Alternative Dispute Resolution Office.¹ For the
24 reasons set forth below, we recommend that the Commission dismiss the allegations that Rick for
25 Congress and Brenda Hankins in her official capacity as treasurer (the "Federal Committee"),²

¹ The EPS rating information is as follows:
April 30, 2018.

Complaint Filed: March 1, 2018. Response Filed:

² Rick Saccone is a 2018 candidate for the U.S. House of Representatives for Pennsylvania's 18th Congressional District. Rick for Congress is his principal campaign committee. He is currently a member of the Pennsylvania House of Representatives. Friends of Rick Saccone is his state legislative campaign committee.

1 Friends of Rick Saccone and Nicolas Racculia in his official capacity as treasurer (the “State
2 Committee”), and Rick Saccone violated the Act or Commission regulations.

3 The Complaint alleges that the State Committee made expenditures for activities related to
4 Saccone’s federal campaign in violation of the Act.³ In particular, Complainant challenges four
5 expenditures by the State Committee: (1) an \$800 payment for a full-page newspaper ad, (2) a
6 payment for Saccone and a staffer’s attendance at the Conservative Political Action Conference, (3)
7 a \$145.48 payment for campaign supplies, and (4) a \$955 transfer to the Federal Committee.⁴

8 Respondents admit that the State Committee made the four payments and assert that any
9 violation of the Act was inadvertent.⁵ First, Respondents assert that the \$800 payment was an
10 overdue payment for an ad that ran the month before Saccone’s November 2016 election for State
11 Representative and was unrelated to the federal campaign.⁶ Second, Respondents assert that the
12 State Committee believed it could reimburse the conference costs because Saccone was a
13 Pennsylvania State Representative, and, in an abundance of caution, the Federal Committee has
14 reimbursed the State Committee for those costs.⁷ Third, Respondents assert that the \$145.48
15 payment was for two ink cartridges, and any violation was *de minimis*.⁸ Fourth, Respondents
16 explain that the State Committee mistakenly believed it could transfer the \$995 to the Federal

³ Compl. at 2 (Mar. 1, 2018).

⁴ *Id.* at 2-3.

⁵ Resp. at 2-3 (Apr. 30, 2018).

⁶ *Id.* at 2, Ex. A.

⁷ *Id.* at 2.

⁸ *Id.* at 2.

1 Committee, and that the Federal Committee has issued a refund.⁹ Finally, the State Committee's
2 treasurer has agreed to seek approval from the State Committee Chairman or counsel before
3 spending any funds while Saccone is a federal candidate.¹⁰

4 The Act prohibits a federal candidate from soliciting, receiving, directing, transferring or
5 spending funds in connection with a federal campaign unless the funds are subject to the limitations,
6 prohibitions, and reporting requirement of the Act.¹¹ The Act provides that this prohibition does not
7 apply to the solicitation, receipt, or spending of funds by an individual who is or was also a candidate
8 for a state or local office solely in connection with such election for state or local office so long as the
9 solicitation, receipt, or spending of funds is permitted under state law.¹² Commission regulations
10 further prohibit the transfer of funds or assets from a candidate's campaign committee for a
11 nonfederal election to his principal campaign committee for a federal election or other authorized
12 committee for a federal election.¹³

13 The available information shows that the State Committee paid for certain expenditures
14 related to Saccone's federal candidacy, and the State Committee transferred money to the Federal
15 Committee. Based on Respondents' prompt remedial action and the low dollar amount at issue, we
16 recommend that the Commission dismiss the allegations against Rick for Congress and Brenda
17 Hankins in her official capacity as treasurer, Friends of Rick Saccone and Nicolas Racculia in his
18 official capacity as treasurer, and Rick Saccone consistent with the Commission's prosecutorial

⁹ *Id.* at 3. Respondents explain that the State Committee had collected enough federally permissible contributions, and did not realize that regulations prohibited the transfer of funds from a candidate's committee for a nonfederal election to his principal campaign committee. *Id.*

¹⁰ *Id.* at 3.

¹¹ 52 U.S.C. § 30125(e)(1)(A).

¹² 52 U.S.C. § 30125(e)(2).

¹³ 11 C.F.R. § 110.3(d).

1 discretion to determine the proper ordering of its priorities and use of agency resources. *Heckler v.*
2 *Chaney*, 470 U.S. 821, 831-32 (1985).

3 **RECOMMENDATIONS**

- 4
5 1. Dismiss the allegations that Rick for Congress and Brenda Hankins in her official
6 capacity as treasurer, Friends of Rick Saccone and Nicolas Racculia in his official
7 capacity as treasurer, and Rick Saccone violated the Act and Commission regulations,
8 pursuant to the Commission's prosecutorial discretion under *Heckler v. Chaney*, 470 U.S.
9 821 (1985);
10
11 2. Approve the attached Factual and Legal Analysis and the appropriate letters; and
12
13 3. Close the file as to all respondents.
14

15
16 Lisa J. Stevenson
17 Acting General Counsel
18

19 Kathleen M. Guith
20 Associate General Counsel
21

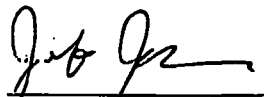
22
23 6.11.18

24 Date


25 BY:

26 

27 Stephen Gura
28 Deputy Associate General Counsel

29 

30 Jeff S. Jordan
31 Assistant General Counsel

32 

33 Kristina M. Portner
34 Attorney
35

36
37 Attachment:
38 Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

1
2
3 RESPONDENTS: Rick for Congress and MUR 7338
4 Brenda Hankins in her official capacity as treasurer,
5 Friends of Rick Saccone and Nicolas Racculia
6 in his official capacity as treasurer, and
7 Rick Saccone
8

9 This matter was generated by a complaint alleging violations of the Federal Election
10 Campaign Act of 1971, as amended (the "Act") and Commission regulations by Rick for
11 Congress and Brenda Hankins in her official capacity as treasurer (the "Federal Committee"),
12 Friends of Rick Saccone and Nicolas Racculia in his official capacity as treasurer (the "State
13 Committee"), and Rick Saccone. It was scored as a low-rated matter under the Enforcement
14 Priority System, by which the Commission uses formal scoring criteria as a basis to allocate its
15 resources and decide which matters to pursue.

16 The Complaint alleges that the State Committee made expenditures for activities related
17 to Saccone's federal campaign in violation of the Act.¹ In particular, Complainant challenges
18 four expenditures by the State Committee: (1) an \$800 payment for a full-page newspaper ad,
19 (2) a payment for Saccone and a staffer's attendance at the Conservative Political Action
20 Conference, (3) a \$145.48 payment for campaign supplies, and (4) a \$955 transfer to the Federal
21 Committee.²

22 Respondents admit that the State Committee made the four payments and assert that any
23 violation of the Act was inadvertent.³ First, Respondents assert that the \$800 payment was an
24 overdue payment for an ad that ran the month before Saccone's November 2016 election for

¹ Compl. at 2 (Mar. 1, 2018).

² *Id.* at 2-3.

³ Resp. at 2-3 (Apr. 30, 2018).

1 State Representative and was unrelated to the federal campaign.⁴ Second, Respondents assert
2 that the State Committee believed it could reimburse the conference costs because Saccone was
3 a Pennsylvania State Representative, and, in an abundance of caution, the Federal Committee
4 has reimbursed the State Committee for those costs.⁵ Third, Respondents assert that the \$145.48
5 payment was for two ink cartridges, and any violation was *de minimis*.⁶ Fourth, Respondents
6 explain that the State Committee mistakenly believed it could transfer the \$995 to the Federal
7 Committee, and that the Federal Committee has issued a refund.⁷ Finally, the State
8 Committee's treasurer has agreed to seek approval from the State Committee Chairman or
9 counsel before spending any funds while Saccone is a federal candidate.⁸

10 The Act prohibits a federal candidate from soliciting, receiving, directing, transferring or
11 spending funds in connection with a federal campaign unless the funds are subject to the
12 limitations, prohibitions, and reporting requirement of the Act.⁹ The Act provides that this
13 prohibition does not apply to the solicitation, receipt, or spending of funds by an individual who
14 is or was also a candidate for a state or local office solely in connection with such election for
15 state or local office so long as the solicitation, receipt, or spending of funds is permitted under
16 state law.¹⁰ Commission regulations further prohibit the transfer of funds or assets from a

⁴ *Id.* at 2, Ex. A.

⁵ *Id.* at 2

⁶ *Id.* at 2.

⁷ *Id.* at 3. Respondents explain that the State Committee had collected enough federally permissible contributions, and did not realize that regulations prohibited the transfer of funds from a candidate's committee for a nonfederal election to his principal campaign committee. *Id.*

⁸ *Id.* at 3.

⁹ 52 U.S.C. § 30125(e)(1)(A).

¹⁰ 52 U.S.C. § 30125(e)(2).

1 candidate's campaign committee for a nonfederal election to his principal campaign committee
2 for a federal election or other authorized committee for a federal election.¹¹

3 The available information shows that the State Committee paid for certain expenditures
4 related to Saccone's federal candidacy, and the State Committee transferred money to the
5 Federal Committee.

6 In furtherance of the Commission's priorities relative to other matters pending on the
7 Enforcement docket, the relatively modest amounts at issue, and remedial actions taken by the
8 Committee, the Commission exercises its prosecutorial discretion and dismisses the allegations
9 as to Rick for Congress and Brenda Hankins in her official capacity as treasurer, Friends of Rick
10 Saccone and Nicolas Racculia in his official capacity as treasurer, and Rick Saccone. *Heckler v.*
11 *Chaney*, 470 U.S. 821, 831-32 (1985).

¹¹ 11 C.F.R. § 110.3(d)