

FEDERAL ELECTION COMMISSION WASHINGTON, D.C. 20463

Brad Deutsch Garvey Schubert Barer 1000 Potomac Street, NW, Suite 200 Washington, DC 20007

## NOV - 7 2018

RE: MUR 7367 Anthony Brindisi Brindisi for Congress and Jennifer May, as Treasurer Friends of Anthony J. Brindisi and Lorraine McGovern, as Treasurer

Dear Mr. Deutsch:

The Federal Election Commission ("Commission") previously notified your clients, Anthony Brindisi, Brindisi for Congress and Jennifer May in her official capacity as treasurer (collectively, the "Federal Committee"), and Friends of Anthony J. Brindisi and Lorraine McGovern in her official capacity as treasurer (collectively, the "State Committee") of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act") and Commission regulations.

On November 6, 2018, based upon the information contained in the complaint and information provided by Respondents, the Commission dismissed allegations that Respondents violated the Act and Commission regulations, pursuant to the Commission's prosecutorial discretion. *See Heckler v. Chaney*, 470 U.S. 821 (1985). Accordingly, the Commission closed its file in this matter on November 6, 2018.

The Commission encourages your clients to review the enclosed Factual and Legal Analysis, which sets forth the statutory and regulatory provisions considered by the Commission in this matter. In particular, the Commission reminds Respondents that Commission regulations prohibit the transfer of funds from a candidate's nonfederal campaign committee to his or her federal committee. Additionally, the Commission advises the Federal Committee to refund the two contributions that the State Committee made to the Federal Committee. For further information on the Act, please refer to the Commission's website at www.fec.gov or contact the Commission's Public Information Division at (202) 694-1100.

Documents related to this case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009).

MUR 7367 Brindisi for Congress, et al.

If you have any questions, please contact the attorney assigned to this matter, Don Campbell, at (202) 694-1551.

Sincerely, Lisa J. Stevenson Acting General Counsel

BY: Jeff S. Jordan Assistant General Counsel

Enclosure Factual and Legal Analysis

## FACTUAL AND LEGAL ANALYSIS 1 2 3 **RESPONDENTS:** Anthony J. Brindisi MUR 7367 Brindisi for Congress 4 and Jennifer May, as treasurer 5 Friends of Anthony J. Brindisi 6 7 and Lorraine McGovern, as treasurer 8 9 I. **INTRODUCTION** 10 11 This matter was generated by a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations by Anthony J. 12 Brindisi, Brindisi for Congress and Jennifer May, in her official capacity as treasurer ("the 13 Federal Committee"), and Friends of Anthony J. Brindisi and Lorraine McGovern, in her official 14 15 capacity as treasurer ("the State Committee"). It was scored as a low-rated matter under the 16 Enforcement Priority System, by which the Commission uses formal scoring criteria as a basis to 17 allocate its resources and decide which matters to pursue. 18 II. FACTUAL AND LEGAL ANALYSIS 19 **Factual Background** Α. 20 The Complaint alleges that Brindisi made donations from his State Committee to 21 Democratic committees, and the State Committee disclosed two \$1,000 contributions to the

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- 22 Federal Committee, but the Federal Committee did not report receiving them.<sup>1</sup> Respondents
- 23 state that the Federal Committee disclosed the contributions from the State Committee in its

Compl. at 1 (Apr. 17, 2018).

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reports filed with the Commission.<sup>2</sup> Respondents also state that these contributions were within
the Act's limits and contained only federally permissible funds.<sup>3</sup>

3 B. Legal Analysis

The Act and Commission regulations prohibit a federal candidate from soliciting,

5 receiving, directing, transferring or spending funds in connection with a federal campaign unless

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6 the funds are in amounts and from sources permitted by the Act.<sup>4</sup> Further, Commission

7 regulations prohibit the transfer of funds from a candidate's nonfederal campaign committee to

8 his or her federal committee.<sup>5</sup>

The Federal Committee's reports reveal that the State Committee made two \$1,000

10 contributions to the Federal Committee, which accepted them. As federal candidates are

11 prohibited from transferring funds from their state committees to their federal committees, the

12 State Committee should not have made the contributions, and the Federal Committee should not

13 have accepted them.

14 Since the amount at issue is *de minimis*, the Commission exercises its prosecutorial

15 discretion and dismisses the allegations as to all Respondents,<sup>6</sup> and reminds the State Committee

16 and the Federal Committee of the prohibition at 11 C.F.R. § 110.3(d).

<sup>3</sup> Resp. at 2 n.6; see 52 U.S.C. § 30116(a)(1)(A), 11 C.F.R. § 110.1.

<sup>4</sup> 52 U.S.C. § 30125(e)(1).

<sup>5</sup> 11 C.F.R. § 110.3(d).

<sup>6</sup> Heckler v. Chaney, 470 U.S. 821, 831-32 (1985). The Complaint also makes allegations that Brindisi was "using money" to attend "events" that he was attending as congressional candidate. The Commission dismisses this allegation because it is vague and unsupported. *Id*.

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Resp. at 1-2 (June 15, 2018). See also Brindisi for Congress 2017 October Quarterly at 193, available at <a href="http://docquery.fec.gov/pdf/854/201710139075643854/201710139075643854.pdf">http://docquery.fec.gov/pdf/854/201710139075643854/201710139075643854.pdf</a>, and Brindisi for Congress 2018 April Quarterly at 396, available at <a href="http://docquery.fec.gov/pdf/665/201804159108235665/201804159108235665/201804159108235665/201804159108235665/201804159108235665.pdf">http://docquery.fec.gov/pdf/854/201710139075643854/201710139075643854.pdf</a>, and Brindisi for Congress 2018 April Quarterly at 396, available at <a href="http://docquery.fec.gov/pdf/665/201804159108235665/201804159108235665/201804159108235665/201804159108235665/201804159108235665/201804159108235665/201804159108235665/201804159108235665/201804159108235665.pdf</p>