

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

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3
4 In the Matter of)
5)
6 MUR 6286) **CASE CLOSURE UNDER THE**
7 **OUR DEMOCRATIC ORGANIZATION) ENFORCEMENT PRIORITY SYSTEM**
8 **AND JEFFREY BOND, AS TREASURER)**
9

10 **GENERAL COUNSEL'S REPORT**

11 Under the Enforcement Priority System, matters that are low-rated

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13 : are forwarded to the Commission with a recommendation for dismissal The
14 Commission has determined that pursuing low-rated matters, compared to other higher-
15 rated matters on the Enforcement docket, warrants the exercise of its prosecutorial
16 discretion to dismiss these cases The Office of General Counsel scored MUR 6286 as a
17 low-rated matter

18 In this matter, the complaint, filed by Zach Manifold, Executive Director of the
19 Franklin County Democratic Party, alleges that Our Democratic Organization ("ODO") and
20 Jeffrey Bond, in his official capacity as treasurer, violated the Federal Election Campaign
21 Act, as amended, by failing to register and report as a political committee According to the
22 complaint, ODO, which is registered as a political committee with the Ohio Secretary of
23 State, distributed a mailer that contained express advocacy, and in so doing "received
24 contributions and/or made expenditures in excess of \$1,000 " The mailer, which is attached
25 to the complaint, states that it is a "guide for voting in the Democratic Primary " The front
26 of the mailer purports to identify "[o]ur democratic candidates for May 4, 2010 primary that
27 will appear on your voting machines " The back page identifies a total of twenty-one
28 candidates, seven of which appear to be Federal candidates Also listed on the back page

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are two non-federal elective offices with no identified candidates (with recommendations of "vote for all" and "vote for both") and two ballot issues (with no recommendations)

ODO's response indicates that it spent \$7,359.32 on the mailer and distributed it in an area covering Ohio's State Senate 3rd District, and that its content was "merely collateral in nature and issue as to federal jurisdiction." Using various methods of calculating the federal portion of the mailer, ODO claims that the amounts at issue would not meet the \$1,000 political committee threshold.¹ ODO also appears to suggest that identifying more than one candidate without indicating a preference (which is the case for two of the four federal races listed) results in a "cancelling out as to any advantage."

Groups meeting one of the definitions of "political committee," as provided for in 2 U.S.C. § 431(4), must register with the Commission and file periodic reports of receipts and disbursements. See also 2 U.S.C. §§ 433(a) and 434(a). Relevant to this matter, a political committee includes "any committee, club, association, or other group of persons" that receives "contributions" or makes "expenditures" in excess of \$1,000 during a calendar year.² 2 U.S.C. § 431(4)(A). Although there may be various ways to allocate the cost of the mailer between the federal and non-federal components, it appears that the federal portion may have only potentially exceeded the \$1,000 expenditure threshold by a relatively small margin. Furthermore, there is a lack of available information suggesting

¹ For example, ODO performs an "issue" comparison in concluding that the federal portion amounts to only 1/22 of the mailer content, or \$335. ODO also suggests that an approach based on "standards of newspaper advertising rates by lineage" would yield a federal portion of 2%, or \$147.20. An attribution based strictly on the number of identified candidates would yield a "federal" cost portion of \$2,453.11 ($7/21 \times \$7,359.32$), that figure would be reduced if the non-identified candidates (all non-federal) are included.

² ODO does not appear to be a local committee of a political party, accordingly, the thresholds at 2 U.S.C. § 431(4)(C) do not apply here.

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1 that ODO's major purpose is the election or defeat of federal candidates³ Accordingly, in
2 light of the modest expenses associated with the mailer at issue, coupled with the
3 Commission's priorities and resources, relative to other matters pending on the
4 Enforcement docket, the Office of General Counsel believes that the Commission should
5 exercise its prosecutorial discretion and dismiss the matter *See Heckler v Chaney*, 470
6 U S 821 (1985)

7 **RECOMMENDATIONS**

8 The Office of General Counsel recommends that the Commission dismiss
9 MUR 6286, close the file, and approve the appropriate letters

10 Thomasenia P Duncan
11 General Counsel

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15 8/17/10
16 Date

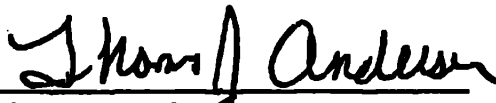
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Gregory R Baker
Special Counsel
Complaints Examination
& Legal Administration

Jeff S Jordan
Supervisory Attorney
Complaints Examination
& Legal Administration

³ The Supreme Court has stated that only organizations whose "major purpose" is federal campaign activity can potentially qualify as political committees under the Act *See, e g, Buckley v Valeo*, 424 U S 1, 79 (1976), *FEC v Massachusetts Citizens for Life*, 479 U S 238, 262 (1986)

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Thomas J Andersen
Attorney

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