



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

**OCT 16 2008**

Kenneth H. Hooks, III  
Dodson, Hooks and Frederick  
17405 Perkins Road  
Baton Rouge, LA 70810

RE: MUR 6011  
Darrell Glasper, *et al.*

Dear Mr. Hooks:

This is in reference to the complaint you filed with the Federal Election Commission on May 12, 2008 concerning Darrel Glasper, Friends of Michael Jackson and Unknown Persons. After considering the circumstances of this matter, the Commission determined to dismiss this matter and closed the file on October 9, 2008. At the same time, the Commission admonished Darrell Glasper regarding his apparent violations of 2 U.S.C. §§ 434(c) and 441d(a). The Factual and Legal Analysis explaining the Commission's decision is enclosed.

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 Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

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

Sincerely,

Thomasenia P. Duncan  
General Counsel

BY: Susan L. Lebeaux  
Acting Deputy Associate General Counsel

Enclosure  
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT:** Darrell Glasper

MUR 6011

**I. INTRODUCTION**

The complaint in this matter alleges that Darrell Glasper, Friends of Michael Jackson and unknown persons initiated fraudulent mass telephone calls ("robo-calls") to African-American households asking voters not to participate in the May 3, 2008 special federal election for the open Sixth Congressional seat in Louisiana, in order to teach the Democratic Party a lesson for supporting Don Cazayoux instead of Michael Jackson in the special primary run-off election. The robo-calls concluded with the statement "Paid for by Friends of Michael Jackson." The complaint included an affidavit from Michael Jackson denying that he had permitted any person or group to use his name for purposes of the calls. In his response, Darrell Glasper provided an affidavit stating that he, on his own initiative, is responsible for the robo-calls, had paid for them with his own funds, and had not worked in conjunction with or at the behest of Michael Jackson in connection with them. The Commission admonished Mr. Glasper for his apparent failure to include the proper disclaimer in the text of the robo-calls and to disclose the cost of those calls as an independent expenditure in a report filed with the Commission.

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Facts**

In January 2008, Congressman Richard Baker from Louisiana's Sixth Congressional District announced that he was resigning from Congress, effective February 15, 2008. The State of Louisiana held a special primary election on March 8, 2008 to choose the Democratic and

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Republican nominees for the unexpired term of Congressman Baker, which led to special runoff elections for both parties on April 5, 2008. Don Cazayoux defeated Michael Jackson in the special runoff to become the Democratic candidate in the May 3, 2008 special general election, where he defeated Woody Jenkins, his Republican opponent. As winner of the special general election, Representative Cazayoux will serve the remainder of Congressman Baker's term ending in January 2009, but the seat is up again in the regular November 2008 general election for a two-year term.

The complaint states that on May 2, 2008 and on the morning of the May 3, 2008 election, Darrell Glasper, representing himself as a group called "Friends of Michael Jackson," initiated robo-calls to African-American households asking voters to stay home and not to vote in the May 3, 2008 special general election. According to the complaint (and not disputed by the response), the robo-calls stated:

I'm very upset that the National Democratic Party favored Don Cazayoux from New Roads over Michael Jackson. The Democratic Party raised \$850,000 for Don Cazayoux which is the only reason Michael Jackson lost in the Democratic runoff. The National and State Democratic Parties always seem to back the white democrat over the black democrat and that's wrong. A lot of us who are supporting Michael Jackson feel the National Democratic Party need to be taught a lesson. We're not voting for Don Cazayoux because we believe Woody Jenkins will be a lot easier to beat in November when Senator Barack Obama is on the ballot. You haven't heard many black elected officials supporting Don Cazayoux. On Saturday we're going to stay home and see how the National Democratic Party do without us. Paid for by Friends of Michael Jackson.

Included as Exhibit 1 to the complaint is a handwritten affidavit signed by Michael Jackson which states:

1. On May \_\_\_\_, (blank in the original), affiant has been informed that mass telephone calls invoking affiant's name, requesting that voters not vote today (sic).

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2. Affiant has not authorized the use of his [name] for these purposes and supports all lawful attempts to immediately stop these calls.<sup>1</sup>

The complaint also includes a May 6, 2008 article from "*The Advocate*," a Louisiana newspaper, in which Mr. Glasper reportedly admits to recording the calls under the name "Friends of Michael Jackson," states that the message was sent to 10,000 telephone numbers before Mr. Jackson asked him to stop, and that he had planned for the message to reach 60,000 telephone numbers. In addition, the article reports that Michael Jackson said he had nothing to do with the robo-calls. Finally, the complaint includes a notarized statement from Mr. Trey Ourso, who states that he was present when Parish Attorney Wade Shows called Mr. Glasper on May 3, 2008, and Mr. Shows reported that Mr. Glasper stated he took responsibility for the calls, that Michael Jackson had called him demanding that the calls be stopped, and that he stopped the calls "because they never sent the money." According to Mr. Ourso's statement, Mr. Glasper would not tell Mr. Shows from whom he was expecting payment. *See discussion infra.*

While not addressed by either the complaint or the response, the May 6, 2008 article from "*The Advocate*," submitted with the complaint, also reports that Michael Jackson said he would run for the Sixth Congressional District seat when it comes up again in November 2008. *See also* John McGinnis, *Louisiana Black Candidates Might Go Independent*, Bayou Buzz.com (May 7, 2008) (reporting that Michael Jackson is running television commercials declaring to his supporters that he is running again in the fall). Thus, around the time of the robo-calls, Michael

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<sup>1</sup> Mr. Jackson's handwritten affidavit apparently was originally submitted in support of a petition for a temporary restraining order filed on May 3, 2008 by Christopher Whittington, Chairman of the Louisiana Democratic Party, asking a Louisiana court to "restrain any and all parties . . . from the further use of Representative Michael Jackson's name . . . for the purposes of denying voters their . . . right to vote. The court's order and petition for a temporary restraining order are attached as exhibits to the complaint. On May 3, 2008, Judge Janice Clark of the 19th Judicial District Court of Louisiana issued a temporary restraining order restraining the further use of Representative Michael Jackson's name without his prior approval for the purposes of denying voters their constitutionally protected right to vote.

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Jackson was publicly declaring himself a candidate in the upcoming election. On July 11, 2008, Mr. Jackson filed to run as an Independent for Louisiana's Sixth Congressional seat in the November 2008 general election. Furthermore, the August 28, 2008 edition of the *Roll Call* newspaper quotes Michael Jackson as blaming his loss in the Democratic primary runoff on the Democratic Congressional Campaign Committee's favoritism toward Don Cazayoux.

In response to the complaint, Darrell Glasper submitted an affidavit averring "[o]n my own initiative, I chose to employ a telephone bank for the purposes of voicing my displeasure with the Democratic party's lack of support for Mr. Jackson . . . and expressly authorized a message which summarized my displeasure with the National Democratic Party... [that was] sent telephonically to a number of households within the Sixth Congressional District." Further, Mr. Glasper avers that "the decision to place these phone calls was my own personal decision, and I did not act for or on behalf of any candidate in the general election . . . I did not work in conjunction with or at the behest of Michael Jackson. . . . [and] the full and complete totality of my efforts were of my own personal volition." Mr. Glasper also states in his affidavit that he did not receive any contributions from others with regard to the robo-calls, that his expenditures were less than \$1,000, that he did not operate any corporation or other entity in making the calls, and that he specifically did not create an entity known as "Friends of Michael Jackson."<sup>2</sup>

In a letter from counsel accompanying the affidavit, Glasper argues that the robo-calls "simply advised recipients that certain supporters of Mr. Michael Jackson (*e.g.*, friends of Michael Jackson)" planned to teach the Democratic Party a lesson by not voting for the Democratic candidate in the general election. Mr. Glasper further argues that his right to make

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<sup>2</sup> It does not appear that Friends of Michael Jackson" was ever an actual entity. According to Commission records, Michael Jackson originally filed his Statement of Candidacy form on January 15, 2008 and identified the name of his committee as Jackson for Congress. There is no political committee registered with the Commission named Friends of Michael Jackson.

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these calls is protected under the First Amendment because as a private citizen not acting on behalf of any candidate, he chose to engage in the political process by apprising other voters of his views through use of a telephone bank. Therefore, he requests that the Commission dismiss this matter.

**B. Analysis**

The facts alleged in the complaint implicate three possible violations of the Federal Election Campaign Act of 1971, as amended (the "Act"): fraudulent misrepresentation of campaign authority (2 U.S.C. § 441h), an inadequate disclaimer (2 U.S.C. § 441d(a)), and an unreported independent expenditure (2 U.S.C. § 434(c)).

Mr. Glasper does not appear to have violated section 441h(a)(1), which prohibits any person who is a candidate or an employee or agent of such candidate from fraudulently misrepresenting himself as speaking, writing, or acting for or on behalf of another candidate or political party on a matter that is damaging to that candidate or party. Mr. Glasper was not a candidate in the May 2008 special general election or the November 2008 general election, and there is no information that Michael Jackson or his campaign employed Glasper or that he was Jackson's agent for purposes of the robo-calls. Most importantly, Mr. Glasper did not purport to speak or act on behalf of another candidate or political party, including Democratic candidate Don Cazayoux, Republican candidate Woody Jenkins, the National Democratic Party, or any other political party on any matter at all. Nor does it appear that Mr. Glasper violated section 441h(b)(1), which prohibits any person from fraudulently misrepresenting the person as speaking, writing or otherwise acting on behalf of any candidate or political party or agent thereof for the purpose of soliciting contributions or donations, because the robo-calls did not

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solicit any contributions or donations for Jackson's campaign.<sup>3</sup> Although Mr. Glasper does not appear to have fraudulently misrepresented campaign authority within the meaning of 2 U.S.C. § 441h, it appears that he violated the disclaimer and independent expenditure provisions of the Act, which are discussed below.

**1. Failure to include the proper disclaimer**

Whenever any person makes a public communication that expressly advocates the election or defeat of a clearly identified candidate, the communication must include a disclaimer. 2 U.S.C. § 441d(a), 11 C.F.R. § 110.11(a)(2). Such a communication not authorized by a candidate, authorized committee of a candidate, or an agent of either of the candidate or authorized committee, must contain a disclaimer that clearly states the full name and permanent street address, telephone number or World Wide Web address of the person who paid for the communication, and that the communication is not authorized by any candidate or candidate's committee. 2 U.S.C. § 441d(a)(3); 11 C.F.R. § 110.11(b)(3). A public communication includes a communication by telephone bank to the general public. 11 C.F.R. § 100.26. A telephone bank means that more than 500 calls of an identical or substantially similar nature were made within a 30-day period. 11 C.F.R. § 100.28.

As noted previously, Mr. Glasper reportedly stated that 10,000 robo-calls were made to households in the Sixth Congressional District of Louisiana. If accurate, the robo-calls meet the definition of a public communication because they were identical or essentially similar, numbered in excess of 500, and took place over a two-day period. Thus, the calls would have

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<sup>3</sup> The statement in Mr. Ourso's declaration, submitted with the complaint, that Mr. Glasper stopped the calls "because they never sent the money," appears to refer to a failed expectation that others would help pay for the robo-calls, not to a scheme to solicit money through the calls themselves.

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required a disclaimer if they expressly advocated the election or defeat of a clearly defined candidate.

Under the Commission's regulations, a communication contains express advocacy when it uses phrases such as "vote for the President," "re-elect your Congressman," "support the Democratic nominee," "cast your ballot for the Republican challenger U.S. Senate in Georgia," "Smith for Congress," "Vote Pro-Life" or "vote Pro-Choice," accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice," "Vote against Old Hickory," or "reject the incumbent," or uses campaign slogans or words that in context have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates, such as posters, bumper stickers, or advertisements that say, "Nixon's the One," "Carter '76," "Reagan/Bush," or "Mondale!" See 11 C.F.R. § 100.22(a); see also *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 249 (1986) ("MCFL") ("[The publication] provides in effect an explicit directive: vote for these (named) candidates. The fact that this message is marginally less direct than "Vote for Smith" does not change its essential nature."). The second part of this regulation encompasses a communication that, when taken as a whole or with limited reference to external events, "could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because" it contains an "electoral portion" that is "unmistakable, unambiguous, and suggestive of only one meaning" and "reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action." See 11 C.F.R. § 100.22(b).

Although a close call, we conclude that the robo-calls expressly advocate the defeat of Don Cazayoux within the meaning of Sections 100.22(a). The calls focus on the special general

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election between Don Cazayoux and Woody Jenkins. Section 100.22 (a) provides that a communication “expressly advocates” the election or defeat of a candidate if it “uses phrases such as ... “Vote Pro-Choice” or “vote “Pro-Choice” “accompanied by a listing of clearly identified candidates identified as Pro-Life or Pro-Choice.” In an analogous manner, the robo-calls here contain an imperative and then tell the voter what electoral action with respect to a clearly identified candidate will meet that imperative. After setting forth the imperative-- the “need” to teach the Democratic Party a lesson for not supporting Michael Jackson, Cazayoux’s opponent in the Democratic primary runoff, the robo-calls provide the model for accomplishing the goal: “We’re not voting for Don Cazayoux” and “On Saturday we’re going to stay home and see how the National Democratic Party do without us.” These words can, in context, have no other reasonable meaning than to urge voters not to participate in the special election so that Don Cazayoux will lose, and the National Democratic Party will thereby be taught the lesson it “needs.” As in *MCFL*, although the message is “marginally less direct than” don’t vote for Don Cazayoux, that “does not change its essential nature.” *MCFL* at 249. Thus, the calls meet the requirements for express advocacy under section 100.22(a).

In addition, the calls meet Section 100.22(b) as the references to the candidates in the special general election and primary runoff and to the upcoming general election in November are entirely electoral in nature, and the clear message of the text, such as “A lot of us who are supporting Michael Jackson feel the National Democratic Party need to be taught a lesson” and “We’re not voting for Don Cazayoux because we believe Woody Jenkins will be a lot easier to beat in November when Senator Barack Obama is on the ballot,” is for voters to stay home for the special general election instead of voting for Don Cazayoux so that his Republican opponent will be elected and Michael Jackson will have a better chance of winning in November. Thus,

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reasonable minds could not differ as to whether the robo calls were for the purpose of defeating Don Cazayoux. When taken as a whole, the text of the robo-calls is “unmistakable, unambiguous, and suggestive of only one meaning:” defeat Don Cazayoux by staying home and not voting for him in the May 3, 2008 special election.

Because the robo-calls were public communications that contain express advocacy, the calls should have contained the appropriate disclaimer for communications not authorized by a candidate, authorized committee of a candidate, or an agent of either of the candidate or authorized committee.

## **2. Failure to report independent expenditure**

Because the robo calls expressly advocated the defeat of Don Cazayoux and Darrell Glasper averred in his affidavit that he acted alone in sponsoring them, the costs of the robo-calls are independent expenditures. *See* 2 U.S.C. § 431(17). Under the Act, every person that is not a political committee who makes independent expenditures aggregating in excess of \$250 with respect to a given election in a calendar year is required to timely file an FEC Form 5 that contains reporting person’s name, mailing address, occupation, name of employer, if any, the name and address of the person to whom the expenditure was made, the amount, date, and purpose of the expenditure, a statement that indicates whether such expenditure was in support of, or in opposition to a candidate, with the candidate’s name and office sought, and a verified certification under penalty of perjury as to whether such expenditure was made in cooperation, consultation, or concert with, or at the request or suggestion of a candidate, a candidate’s authorized committee, or their agents, or a political party committee or its agents. *See* 2 U.S.C. § 434(c); 11 C.F.R. § 109.10(c) and (e). While Mr. Glasper averred that he spent less than \$1,000 (and received no funds from others) for the calls, his costs likely exceeded \$250,

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requiring the filing of an independent expenditure report. To be timely, Mr. Glasper's independent expenditure report should have been filed with the Commission by July 15, 2008. To date, he has not filed such a report.

Because the amount in violation appears to be relatively low, the Commission has decided, as a matter of prosecutorial discretion, to dismiss the complaint, admonish Mr. Glasper for his apparent violations of 2 U.S.C. §§ 441d(a) and 434(c), and close the file. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

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