

COPY

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

MUR 6359)

VOTERS RESPONSE)

DAVID RAMBA)

DAVID RIVERA FOR CONGRESS)

AND NANCY H. WATKINS,)

AS TREASURER)

DAVID RIVERA)

CASE CLOSURE UNDER THE
ENFORCEMENT PRIORITY
SYSTEM

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FEDERAL ELECTION
COMMISSION

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring criteria to allocate its resources and decide which cases to pursue. These criteria include, but are not limited to, an assessment of (1) the gravity of the alleged violation, both with respect to the type of activity and the amount in violation, (2) the apparent impact the alleged violation may have had on the electoral process, (3) the legal complexity of issues raised in the case, (4) recent trends in potential violations of the Act, and (5) development of the law with respect to certain subject matters. It is the Commission's policy that pursuing low-rated matters, compared to other higher-rated matters on the Enforcement docket, warrants the exercise of its prosecutorial discretion to dismiss certain cases, or where there are no facts to support the allegations, to make no reason to believe findings. For the reasons set forth below, this Office recommends that the Commission make no reason to believe findings in MUR 6359.

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1 In this matter, the complainant, William R. Barzee, alleges that David Rivera, a
2 2010 general election candidate for Florida's 25th Congressional District, and Voters
3 Response, a self-described "527 electioneering communications organization," coordinated
4 activities against opposing candidate Joe Garcia through a common vendor, Bascom
5 Communications & Consulting LLC ("Bascom Communications"). Specifically,
6 complainant noted that on August 6, 2010, Bascom Communications sent out an e-mail
7 communication (entitled "Statement by David Rivera") denouncing certain false allegations
8 against Mr. Rivera.¹ Complainant also noted that Mr. Rivera did not disclose a
9 corresponding disbursement to the Commission for the e-mail communication, but that
10 Voters Response's state disclosure reports showed a \$1,500 disbursement to Bascom
11 Communications on July 29, 2010. Complaint further noted that Voters Response
12 distributed a flyer critical of Mr. Garcia and that David Ramba, Voters Response Chairman,
13 had given the \$2,400 maximum contribution to Mr. Rivera's campaign on March 3, 2010
14 for the August 24, 2010 primary election.² Based on the above information, complainant
15 surmised that Mr. Rivera and Voters Response were coordinating their activities. Finally,
16 based on Mr. Ramba's \$2,400 maximum primary election contribution to Mr. Rivera's
17 principal campaign committee, the complainant also alleges that the respondents
18 circumvented federal contribution limits by permitting Voters Response to offset
19 Mr. Rivera's primary election expenses.

20 In its response, Voters Response denied coordinating any activities with
21 Mr. Rivera's campaign. Voters Response explained that it retained Bascom

¹ Complaint appended a copy of the e-mail, with the recipient's name obscured.

² Complainant appended an outlined and partial copy of the Voters Response flyer.

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1 Communications to assist it with media and social networking research of state candidates
2 between July 1, 2010 and May 31, 2011. Voters Response provided a July 21, 2010
3 retainer agreement that requires Bascom Communications to provide for a \$1,500 monthly
4 fee, strategic communications consulting and social networking services, including
5 professional services, email database maintenance, email distribution service, and limited
6 editing and copy writing of social networking outreach correspondences. Voters Response
7 asserts that it did not discuss its federal activities with Bascom Communications and did not
8 compensate Bascom Communications for any work it may have done for Mr. Rivera's
9 campaign. Voters Response further asserts that it was not aware that Bascom
10 Communications was also providing services to Rivera's campaign until it was contacted
11 by the press about the complaint.

12 In its response, the Committee also denies coordinating any activities with Voters
13 Response. The Committee acknowledges having a business relationship with Bascom
14 Communications, explaining that it hired the company as an independent contractor as of
15 August 1, 2010. In sworn affidavits, the president of Bascom Communications and the
16 Committee's campaign manager declared that Bascom Communications and the Committee
17 were unaware of, and not involved with, the Voter Response flyer appended to the
18 complaint. Bascom Communications also denied using or conveying to Voter Response
19 any information about the Committee's campaign plans or needs. The Committee and
20 Bascom Communications further deny any arrangement with Voters Response to pay
21 Bascom Communications for services the company performed for the Committee. The
22 Committee paid Bascom Communications \$2,500 on August 24, 2010 for media consulting
23 and disclosed the payment to the Commission.

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According to the Commission's regulations, coordination involves a comprehensive three-pronged test: 1) payment by a person other than the candidate; 2) satisfaction of one of five content standards; and 3) satisfaction of one of six conduct standards. See 11 C.F.R. § 109.21(a), (c) and (d). The facts supplied by the complainant do not appear to satisfy the coordination test and the allegations appear to be refuted or sufficiently explained by the complaint responses. Specifically, it does not appear that Voters Response paid for the August 6, 2010 e-mail. Voters Response's July 29, 2010 disbursement to Bascom Communications appears to be an unrelated payment consistent with Voters Response's retainer agreement with Bascom Communications. It appears that the Committee paid for the e-mail expenses through its August 24, 2010 disbursement to Bascom Communications. Similarly, although it appears that Voters Response paid for the flyer, the complaint does not show that Bascom Communications or the Committee was involved in any way with the flyer. See 11 CFR § 109.21(d). Thus, although Bascom Communications was a common vendor to the Committee and Voters Response, it does not appear that either the e-mail or the flyer is a coordinated communication under the Commission's regulations. See 11 C.F.R. § 109.21(d)(4). Accordingly, this Office recommends that the Commission find that there is no reason to believe that Voters Response, David Rivera for Congress and Nancy H. Watkins, in her official capacity as treasurer, David Rivera, and David Rannin violated 11 C.F.R. § 109.21.

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RECOMMENDATIONS

1. Find no reason to believe that Voters Response, David Rivera for Congress and Nancy H. Watkins, in her official capacity as treasurer, David Rivera, and David Ramba violated 11 C.F.R. § 109.21.
2. Close the file.
3. Approve the appropriate letters.

Christopher Hughey
Acting General Counsel

3/31/11
Date

BY:

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