

1 **FEDERAL ELECTION COMMISSION**

2 **FIRST GENERAL COUNSEL'S REPORT**

3 **MUR: 7776**

4 DATE COMPLAINT FILED: August 11, 2020

5 DATE OF NOTIFICATION: August 13, 2020

6 LAST RESPONSE RECEIVED: August 26, 2020

7 DATE ACTIVATED: January 27, 2021

8 EARLIEST SOL: August 5, 2025

9 LATEST SOL: November 2, 2025

10 ELECTION CYCLE: 2020

11 **COMPLAINANT:**

12 Dean Stamos

13 **RESPONDENTS:**

14 Promark Research Corporation

15 Unknown Respondent

16 **RELEVANT STATUTES
AND REGULATIONS:**

17 52 U.S.C. § 30101(17)

18 52 U.S.C. § 30101(22)

19 52 U.S.C. § 30104(b), (c)

20 52 U.S.C. § 30120(a), (c)

21 11 C.F.R. § 100.16

22 11 C.F.R. § 100.26

23 11 C.F.R. § 100.28

24 **INTERNAL REPORTS CHECKED:**

25 Disclosure Reports

26 **FEDERAL AGENCIES CHECKED:**

27 None

28 **I. INTRODUCTION**

29
30
31 The Complaint in this matter alleges that on August 5, 2020, Promark Research
32 Corporation (“Promark”) made a public communication in the form of a survey that failed to
33 include a disclaimer identifying the organization or candidate responsible for the survey, in
34 violation of 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11. Promark does not identify the entity
35 that paid for the survey but denies that the survey was a “public communication” as defined by
36 11 C.F.R. § 100.26, asserting without explanation that a disclaimer was not required.

37 Because the available information suggests that the Promark survey qualifies as a public
38 communication, pursuant to 11 C.F.R. § 100.26 and does not establish that the survey was

1 exempted from the Act's disclaimer and disclosure requirements, we recommend that the
2 Commission find reason to believe that "Unknown Respondent" violated the disclaimer
3 requirements at 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11, and authorize an investigation to
4 ascertain the identity of Unknown Respondent and the amount in violation.

5 **II. FACTUAL BACKGROUND**

6 Representative Andy Kim was the incumbent Democratic candidate for New Jersey's 3rd
7 Congressional District and David Richter was the Republican challenger in the 2020 general
8 election.¹ The Complaint alleges that on August 5, 2020, a representative from Promark called
9 the Complainant on his cellphone, identified Promark as an independent research firm that was
10 conducting an "independent research" survey, and asked if Complainant would participate.²
11 Complainant agreed and claims that the survey consisted of a series of multiple choice
12 questions.³ He further asserts that despite asking multiple times, the interviewer refused to
13 identify who paid for the survey.⁴ According to the Complaint, "The interviewer read
14 statements most would believe were facts and asked questions that reinforced the statements.
15 Questions beginning like 'Knowing David Richter is a patriot, and Andy Kim voted to give
16 illegal immigrants \$6,000 ...' were typical throughout the 34-minute call."⁵

17 Promark states that it is a vendor offering telephone survey research services, as well as
18 online surveying, data collection, and analysis services.⁶ Promark acknowledges that the

1 Representative Kim won reelection.

2 Compl. at 1 (Aug. 11, 2020).

3 *Id.*

4 *Id.*

5 *Id.*

6 Resp. at 1 (Aug. 26, 2020). See <https://www.promarkresearch.com/>.

1 Complainant was called to take a survey Promark was conducting on August 5, 2020, but
2 Promark provides no other information about the survey.⁷ Specifically, Promark does not
3 explain who paid for the survey or how much it cost, it provides no scripts or descriptions of the
4 survey, and it did not identify the time period the survey covered or how many calls were made.⁸
5 Instead, Promark issues a conclusory denial, stating that its survey did not require a disclaimer.⁹
6 Promark asserts that the survey in question was not a “public communication” as defined by
7 11 C.F.R. § 100.26, but instead “was a valid research tool used to gather data from respondents
8 on various issues of public and political import,” and therefore could not be considered an
9 advertisement.¹⁰

10 **III. LEGAL ANALYSIS**

11 Under the Act and Commission regulations, a “public communication” is a
12 communication “by means of any broadcast, cable, or satellite communication, newspaper,
13 magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or
14 any other form of general public political advertising.”¹¹ A public communication includes a

⁷ Resp. at 1.

⁸ A review of the FEC database shows no disbursements to Promark were reported by Richter or any other committee or candidate during the 2020 election cycle.

⁹ Resp. at 1.

¹⁰ *Id.*

¹¹ 52 U.S.C. § 30101(22); 11 C.F.R. § 100.26.

1 communication by telephone bank to the general public.¹² A telephone bank means that more
2 than 500 calls of an identical or substantially similar nature were made within a 30-day period.¹³

3 Generally, “public communications” made by a political committee must include certain
4 disclaimers, as should communications made by any person that expressly advocates the election
5 or defeat of a clearly identified federal candidate.¹⁴ Where the communication is not authorized
6 by a candidate, an authorized political committee of a candidate, or its agents, it shall clearly
7 state the name and permanent street address, telephone number, or World Wide Web address of
8 the person who paid for the communication and state that the communication is not authorized
9 by any candidate or candidate’s committee.¹⁵ The disclaimer must be “presented in a clear and
10 conspicuous manner, to give the reader, observer, or listener adequate notice of the identity of
11 the person or political committee that paid for, and where required, that authorized the
12 communication.”¹⁶ Therefore, any candidate, political committee or their agent(s) making any
13 disbursement for telephone bank calls must include a disclaimer on the calls. If a

¹² 11 C.F.R. § 100.26. The Explanations and Justifications published after the effective date of the 2002 Bipartisan Campaign Reform Act (“BCRA”) amendments to the Act also make clear that a telephone bank is considered a type of general public political advertising. *See* 67 Fed. Reg. 76962, 76963 (Dec. 13, 2002) (“each form of communication specifically listed in the definition of ‘public communication,’ as well as each form of communication listed with reference to a ‘communication’ in 52 U.S.C. § 30120(a), must be a form of ‘general public political advertising.’”).

¹³ 11 C.F.R. § 100.28.

¹⁴ 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11. Although the Commission noted some differences in the language between the term “communication” in the disclaimer statute, 52 U.S.C. §30120(a), and the statutory definition for “public communication,” 52 U.S.C. § 30101(22), the Commission decided to treat the two terms identically based upon how Congress used these terms in BCRA. 67 Fed. Reg. at 76963. The Commission therefore determined that each form of communication specifically listed in the definition of public communication and each form of communication listed in the disclaimer statute “must be a general form of ‘general public political advertising.’” *Id.* Consequently, because 52 U.S.C. § 30101(22) includes telephone banks to the general public as a form of general public political advertising, telephone banks to the general public are general political public advertising under 52 U.S.C. §30120(a) as well. *Id.*

¹⁵ 52 U.S.C. § 30120(a)(3); 11 C.F.R. § 110.11(a)(2).

¹⁶ 11 C.F.R. § 110.11(c).

1 communication is paid for by a person or entity other than a candidate's authorized committee,
2 but authorized by a candidate, the candidate's authorized committee, or an agent of either, the
3 communication must clearly state that it has been paid for by such other persons and authorized
4 by the candidate's authorized political committee.¹⁷

5 Here, based on the description of the survey provided in the Complaint, the Complainant
6 received a "push poll" telephone survey within 90 days of the general election that mentioned
7 two federal candidates in a manner that he understood as disparaging of one candidate and
8 supportive of the other. Promark acknowledges the survey was in the field at the time the
9 Complainant received the call and does not dispute the Complainant's characterization of the
10 survey; however, Promark does not provide information as to how many calls were made, over
11 what time period the survey was conducted, or who paid for the survey.¹⁸

12 In multiple previous matters, the Commission has found that telephone polling
13 constituted a telephone bank requiring a disclaimer where the respondent placed more than 500
14 substantially similar calls within a 30-day period.¹⁹ In MUR 5835 (Democratic Congressional
15 Campaign Committee), however, after initially finding reason to believe that telephone "push
16 polls" conducted in Iowa's 3rd Congressional District, which were apparently directed against a
17 candidate in the Congressional race but did not identify the entity that paid for the polls and did
18 not state whether any candidate authorized the polls, violated the disclaimer requirements of the

¹⁷ 11 C.F.R. § 110.11(b)(2).

¹⁸ A review of David Richter's disclosure filings does not reflect any disbursements to Promark.

¹⁹ *See, e.g.*, MUR 5587R (David Vitter for U.S. Senate) (finding probable cause to believe that respondent violated 52 U.S.C. § 30120 where respondent contended that telephone calls in question were made for polling or research purposes); MURs 5584, 5585 (Unknown Respondents) (finding reason to believe that respondents violated 52 U.S.C. § 30120 where evidence suggested that more than 500 calls using the same scripts were made within a 30-day period).

1 Act, the Commission ultimately did not pursue the matter at the probable cause stage.²⁰ Three
2 Commissioners voting against the Office of General Counsel's ("OGC") probable cause
3 recommendation issued a Statement of Reasons articulating that the Act does not require
4 disclaimers for telephone polls and that the calls in question did not constitute a "telephone
5 bank" under Commission regulations because they were not a form of general public political
6 advertising.²¹ Although the SOR asserted that the term "push poll" has no legal significance
7 because the Act does not define that term, the SOR posited that push polls engage in candidate
8 advocacy and are therefore distinguishable from legitimate public opinion polls, which are
9 designed to collect information without bias.²² The SOR noted that even if the polling casts a
10 candidate in a negative light, such polling does not necessarily become "general political
11 advertising" under the Act and Commission regulations.²³ A majority of the Commission did
12 not approve the position articulated in the MUR 5835 SOR, and in a subsequent matter, OGC
13 provided additional explanation as to why the Act's disclosure requirements apply to telephone
14 push polls, explaining that when the Commission promulgated regulations implementing the
15 2002 Bipartisan Campaign Reform Act ("BCRA"), the Commission determined that Congress
16 "expanded the disclaimer requirement to reach disbursements to finance 'any communication'
17 made by political committees through any type of general public political advertising."²⁴
18 Although the Commission noted some differences in the language between the term

²⁰ See MUR 5835 (Boswell for Congress/Democratic Congressional Campaign Committee).

²¹ See Statement of Reasons ("SOR"), Comm'rs. Hunter, McGahn, & Petersen at 4-9, MUR 5835 (DCCC).

²² See SOR at 9-10, MUR 5835.

²³ *Id.* at 9, 12.

²⁴ First Gen. Counsel's Rpt. ("First GCR") at 6, MUR 6675 (Vernon Parker for Congress), citing 67 Fed. Reg. 76,962, 76,962 (Dec. 13, 2002).

1 “communication” in the disclaimer provision at 52 U.S.C. § 30120(a) and the statutory definition
2 for “public communication” at 52 U.S.C. § 30101(22), the Commission decided to treat the two
3 terms identically based upon how Congress used these terms in BCRA.²⁵ The Commission
4 therefore determined that each form of communication specifically listed in the definition of
5 public communication and each form of communication listed in the disclaimer statute “must be
6 a general form of ‘general public political advertising.’”²⁶ Consequently, because 52 U.S.C.
7 § 30101(22) includes telephone banks to the general public as a form of general public political
8 advertising, telephone banks to the general public are general public political advertising under
9 52 U.S.C. § 30120(a) as well.²⁷

10 The calls at issue likely involved over 500 calls, as the district has a population of
11 approximately 735,981 people, consists of 53 municipalities, and is comprised of Burlington and
12 portions of Ocean counties. Thus, it constitutes a “telephone bank” under the plain meaning of
13 52 U.S.C. § 30101(24) and 11 C.F.R. § 100.28. Whether the communication was conducted
14 within 30 days will have to be ascertained through an investigation but, given Promark’s
15 admission that the poll was “in the field” at that time, it would not be unreasonable to assume
16 that over 500 surveys were conducted within a 30-day period.²⁸

²⁵ 67 Fed. Reg. at 76,963.

²⁶ *Id.*

²⁷ See First GCR at 6, MUR 6675. This matter was dismissed because of the “small scope of activity.” See Factual and Legal Analysis (“F&LA”) at 3, MUR 6675 (Vernon Parker for Congress).

²⁸ Media reports show the race as closely divided in the months leading up to the general election. David Weiner, *GOP polls shows dead heat in NJ-3 race between Kim, Richter*, New Jersey Globe, July 22, 2020, <https://newjerseyglobe.com/congress/gop-polls-hows-dead-heat-in-nj-3-racecovers-2-counties-and-between-kim-richter/>. Ian T. Shearn, *In 3rd district, Kim has incumbency and lots of money. GOP's Richter is betting on Trump to bring out voters*, N.J. Spotlight, Oct. 2, 2020, <https://www.njspotlight.com/2020/10/nj-election-2020-3rd-congressional-district-democrat-andy-kim-has-money-republican-david-richter-depends-trump-voters/>.

1 In similar prior matters where the Commission had information indicating who paid for
2 the polling and how long the polling ran, where the disbursement information suggested that the
3 amount spent on the polling was *de minimis*, the Commission exercised its prosecutorial
4 discretion to dismiss the violations.²⁹ In this matter, however, the communications lack any
5 disclaimer, depriving the public and the Commission required information as to who paid for the
6 survey,³⁰ such that there appears to be sufficient information to find reason to believe that a
7 violation of section 30120(a) has occurred, and because there were no reported disbursements to
8 Promark made in this election cycle, we cannot establish that the amount in violation is *de*
9 *minimis*.

10 Accordingly, we recommend that the Commission find reason to believe that “Unknown
11 Respondents” violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11. Further, we recommend
12 the Commission take no action as to Promark Research Corp. at this time.

13 **IV. INVESTIGATION**

14 The proposed investigation would be targeted and seek to establish who retained and paid
15 Promark to create and distribute the survey, the scripts used in the survey, and the time and
16 breadth of distribution for the survey. Since Promark has already admitted it is the vendor
17 responsible for the communication, we can direct our questions to Promark and should be able to
18 resolve the outstanding issues and determine the amount in violation fairly quickly. The
19 Complaint also indicates that the calls were recorded and we will seek any recordings of the calls

²⁹ See MUR 6675 (Vernon Parker for Congress) (dismissal which involved 6,956 calls at the cost of \$500); see also, MUR 6558 (Jenkins) (dismissal where reported cost of calls was \$75); MUR 6125 (McClintock for Congress) (dismissal with caution based on apparently small amount in violation and possible vendor error); MUR 6034 (Manion for Congress) (dismissal with caution where cost of communications appeared to be \$1,038.80).

³⁰ If the investigation determines that the poll contained express advocacy, then the poll would require a disclaimer regardless of whether a candidate or registered political committee had funded it. See 52 U.S.C. § 30120(a).

1 maintained by Promark. We will seek to conduct the investigation by voluntary means, but we
2 recommend that the Commission authorize compulsory process, as necessary.

3 **V. RECOMMENDATIONS**

- 4 1. Find reason to believe that an Unknown Respondent, also known as the unidentified
5 client of Promark Research Corporation, violated 52 U.S.C. § 30120(a) and 11 C.F.R.
6 § 110.11;
- 7 2. Take no action at this time with respect to Promark Research Corporation;
- 8 3. Approve the attached Factual and Legal Analysis;
- 9 4. Authorize the use of compulsory process, including the issuance of appropriate
10 interrogatories, document subpoenas, and deposition subpoenas, as necessary; and
- 11 5. Approve the appropriate letters.

12 Lisa J. Stevenson
13 Acting General Counsel

14
15
16 Charles Kitcher
17 Associate General Counsel
18 for Enforcement

19
20
21 January 14, 2022

22 Date

23 *Peter G. Blumberg*
24 _____
25 Peter G. Blumberg
26 Acting Deputy Associate General Counsel
27 for Enforcement

28 *Saurav Ghosh*
29 _____
30 Saurav Ghosh
31 Acting Assistant General Counsel

32 *Camilla Jackson Jones*
33 _____
34 Camilla Jackson Jones
35 Attorney

36
37
38

Weintraub Office Edits 4/1/2022

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS****RESPONDENT:** Unknown Respondent **MUR:** 7776**I. INTRODUCTION**

This matter was generated by a Complaint filed with the Federal Election Commission (“Commission”) by Dean Stamos.¹ The Complaint in this matter alleges that on August 5, 2020, Promark Research Corporation (“Promark”) made a public communication in the form of a survey that failed to include a disclaimer identifying the organization or candidate responsible for the survey, in violation of 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11. Promark does not identify the entity that paid for the survey but denies that the survey was a “public communication” as defined by 11 C.F.R. § 100.26, asserting without explanation that a disclaimer was not required.

Because the available information suggests that the Promark survey qualifies as a public communication pursuant to 11 C.F.R. § 100.26 and does not establish that the survey was exempted from the Act’s disclaimer and disclosure requirements, the Commission finds reason to believe that “Unknown Respondent” violated the disclaimer requirements at 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11.

II. FACTUAL BACKGROUND

Representative Andy Kim was the incumbent Democratic candidate for New Jersey’s 3rd Congressional District and David Richter was the Republican challenger in the 2020 general election.² The Complaint alleges that on August 5, 2020, a representative from Promark called the Complainant on his cellphone, identified Promark as an independent research firm that was

¹ See 52 U.S.C. § 30109(a)(1).

² Representative Kim won reelection.

1 conducting an “independent research” survey, and asked if Complainant would participate.³
2 Complainant agreed and claims that the survey consisted of a series of multiple choice
3 questions.⁴ He further asserts that despite asking multiple times, the interviewer refused to
4 identify who paid for the survey.⁵ According to the Complaint, “The interviewer read
5 statements most would believe were facts and asked questions that reinforced the statements.
6 Questions beginning like ‘Knowing David Richter is a patriot, and Andy Kim voted to give
7 illegal immigrants \$6,000 ...’ were typical throughout the 34-minute call.”⁶

8 Promark states that it is a vendor offering telephone survey research services, as well as
9 online surveying, data collection, and analysis services.⁷ Promark acknowledges that the
10 Complainant was called to take a survey Promark was conducting on August 5, 2020, but
11 Promark provides no other information about the survey.⁸ Specifically, Promark does not
12 explain who paid for the survey or how much it cost, it provides no scripts or descriptions of the
13 survey, and it did not identify the time period the survey covered or how many calls were made.⁹
14 Instead, Promark issues a conclusory denial, stating that its survey did not require a disclaimer.¹⁰
15 Promark asserts that the survey in question was not a “public communication” as defined by
16 11 C.F.R. § 100.26, but instead “was a valid research tool used to gather data from Respondents

³ Compl. at 1.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Resp. at 1. See <https://www.promarkresearch.com/>.

⁸ Resp. at 1.

⁹ A review of the FEC database shows no disbursements to Promark were reported by Richter or any other committee or candidate during the 2020 election cycle.

¹⁰ Resp. at 1.

1 on various issues of public and political import,” and therefore could not be considered an
2 advertisement.¹¹

3 **III. LEGAL ANALYSIS**

4 Under the Act and Commission regulations, a “public communication” is a
5 communication “by means of any broadcast, cable, or satellite communication, newspaper,
6 magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or
7 any other form of general public political advertising.”¹² A public communication includes a
8 communication by telephone bank to the general public.¹³ A telephone bank means that more
9 than 500 calls of an identical or substantially similar nature were made within a 30-day period.¹⁴

10 Generally, “public communications” made by a political committee must include certain
11 disclaimers, as should communications made by any person that expressly advocates the election
12 or defeat of a clearly identified federal candidate.¹⁵ Where the communication is not authorized
13 by a candidate, an authorized political committee of a candidate, or its agents, it shall clearly

¹¹ *Id.*

¹² 52 U.S.C. § 30101(22); 11 C.F.R. § 100.26.

¹³ 11 C.F.R. § 100.26. The Explanations and Justifications published after the effective date of the 2002 Bipartisan Campaign Reform Act (“BCRA”) amendments to the Act also make clear that a telephone bank is considered a type of general public political advertising. *See* Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds; Final Rule, 67 Fed. Reg. 76962, 76963 (Dec. 13, 2002) (“each form of communication specifically listed in the definition of ‘public communication,’ as well as each form of communication listed with reference to a ‘communication’ in 52 U.S.C. § 30120(a), must be a form of ‘general public political advertising.’”) (“Disclaimer E&J”).

¹⁴ 11 C.F.R. § 100.28.

¹⁵ 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11. Although the Commission noted some differences in the language between the term “communication” in the disclaimer statute, 52 U.S.C. §30120(a), and the statutory definition for “public communication,” 52 U.S.C. § 30101(22), the Commission decided to treat the two terms identically based upon how Congress used these terms in BCRA. Disclaimer E&J at 76963. The Commission therefore determined that each form of communication specifically listed in the definition of public communication and each form of communication listed in the disclaimer statute “must be a general form of ‘general public political advertising.’” *Id.* Consequently, because 52 U.S.C. § 30101(22) includes telephone banks to the general public as a form of general public political advertising, telephone banks to the general public are general political public advertising under 52 U.S.C. §30120(a) as well. *Id.*

1 state the name and permanent street address, telephone number, or World Wide Web address of
2 the person who paid for the communication and state that the communication is not authorized
3 by any candidate or candidate’s committee.¹⁶ The disclaimer must be “presented in a clear and
4 conspicuous manner, to give the reader, observer, or listener adequate notice of the identity of
5 the person or political committee that paid for, and where required, that authorized the
6 communication.”¹⁷ Therefore, any candidate, political committee or their agent(s) making any
7 disbursement for telephone bank calls must include a disclaimer on the calls. If a
8 communication is paid for by a person or entity other than a candidate’s authorized committee,
9 but authorized by a candidate, the candidate’s authorized committee, or an agent of either, the
10 communication must clearly state that it has been paid for by such other persons and authorized
11 by the candidate’s authorized political committee.¹⁸

12 When the Commission promulgated regulations implementing the 2002 Bipartisan
13 Campaign Reform Act (“BCRA”), it stated in an Explanation and Justification that Congress had
14 “expanded the disclaimer requirement to reach disbursements to finance ‘any communication’
15 made by political committees through any type of general public political advertising.”¹⁹
16 Although the Commission noted some differences in the language between the term
17 “communication” in the disclaimer provision at 52 U.S.C. § 30120(a) and the statutory definition
18 for “public communication” at 52 U.S.C. § 30101(22), the Commission decided to treat the two
19 terms identically based upon how Congress used these terms in BCRA and determined that each

¹⁶ 52 U.S.C. § 30120(a)(3); 11 C.F.R. § 110.11(a)(2).

¹⁷ 11 C.F.R. § 110.11(c).

¹⁸ 11 C.F.R. § 110.11(b)(2).

¹⁹ Disclaimer E&J at 76,962.

1 form of communication specifically listed in the definition of public communication and each
2 form of communication listed in the disclaimer statute “must be a form of ‘general public
3 political advertising.’”²⁰ Consequently, because 52 U.S.C. § 30101(22) includes telephone banks
4 to the general public as a form of general public political advertising, telephone banks to the
5 general public are general public political advertising under 52 U.S.C. § 30120(a) as well.²¹

6 Here, based on the description of the survey provided in the Complaint, the Complainant
7 received a “push poll” telephone survey within 90 days of the general election that mentioned
8 two federal candidates in a manner that he understood as disparaging of one candidate and
9 supportive of the other. Promark acknowledges the survey was in the field at the time the
10 Complainant received the call and does not dispute the Complainant’s characterization of the
11 survey; however, Promark does not provide information as to how many calls were made, over
12 what time period the survey was conducted, or who paid for the survey.²²

13 In multiple previous matters, the Commission has found that telephone polling
14 constituted a telephone bank requiring a disclaimer where the respondent placed more than 500
15 substantially similar calls within a 30-day period.²³ The calls at issue likely involved over 500
16 calls, as the district has a population of approximately 735,981 people, consists of 53
17 municipalities, and is comprised of Burlington and portions of Ocean counties. Thus, it

²⁰ *Id.*

²¹ The Commission acknowledged when it sought comments on the proposed regulation that “one effect of using the consistent terminology . . . would be that ‘telephone banks to the general public’ would be subject to the disclaimer requirements.” *Id.* at 76,963.

²² A review of David Richter’s disclosure filings does not reflect any disbursements to Promark.

²³ *See, e.g.*, MUR 5587R (David Vitter for U.S. Senate) (finding probable cause to believe that respondent violated 52 U.S.C. § 30120 where respondent contended that telephone calls in question were made for polling or research purposes); MURs 5584, 5585 (Unknown Respondents) (finding reason to believe that respondents violated 52 U.S.C. § 30120 where evidence suggested that more than 500 calls using the same scripts were made within a 30-day period).

MUR 7776 (Unknown Respondent)
Factual and Legal Analysis
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1 constitutes a “telephone bank” under the plain meaning of 52 U.S.C. § 30101(24) and 11 C.F.R.
2 § 100.28. Whether the communication was conducted within 30 days will have to be ascertained
3 through an investigation but, given Promark’s admission that the poll was “in the field” at that
4 time, it would not be unreasonable to assume that over 500 surveys were conducted within a 30-
5 day period.²⁴

6 In similar prior matters where the Commission had information indicating who paid for
7 the polling and how long the polling ran, where the disbursement information suggested that the
8 amount spent on the polling was *de minimis*, the Commission exercised its prosecutorial
9 discretion to dismiss the violations.²⁵ In this matter, however, the communications lack any
10 disclaimer, depriving the public and the Commission required information as to who paid for the
11 survey,²⁶ such that there appears to be sufficient information to find reason to believe that a
12 violation of section 30120(a) has occurred, and because there were no reported disbursements to
13 Promark made in this election cycle, the Commission cannot establish that the amount in
14 violation is *de minimis*.

15 Accordingly, the Commission finds reason to believe that “Unknown Respondents”
16 violated the disclaimer requirements at 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11.

²⁴ Media reports show the race as closely divided in the months leading up to the general election. David Weiner, *GOP polls shows dead heat in NJ-3 race between Kim, Richter*, New Jersey Globe, July 22, 2020, <https://newjerseyglobe.com/congress/gop-polls-hows-dead-heat-in-nj-3-racecovers-2-counties-and-between-kim-richter/>. Ian T. Shearn, *In 3rd district, Kim has incumbency and lots of money. GOP’s Richter is betting on Trump to bring out voters*, N.J. Spotlight, Oct. 2, 2020, <https://www.njspotlight.com/2020/10/nj-election-2020-3rd-congressional-district-democrat-andy-kim-has-money-republican-david-richter-depends-trump-voters/>.

²⁵ See MUR 6675 (Vernon Parker for Congress) (dismissal which involved 6,956 calls at the cost of \$500); see also, MUR 6558 (Jenkins) (dismissal where reported cost of calls was \$75); MUR 6125 (McClintock for Congress) (dismissal with caution based on apparently small amount in violation and possible vendor error); MUR 6034 (Manion for Congress) (dismissal with caution where cost of communications appeared to be \$1,038.80).

²⁶ If the investigation determines that the poll contained express advocacy, then the poll would require a disclaimer regardless of whether a candidate or registered political committee had funded it. See 52 U.S.C. § 30120(a).