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FEDERAL ELECTION COMMISSION
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OFFICE OF GENERAL COUNSEL

**BEFORE THE
FEDERAL ELECTION COMMISSION**

North Carolina Democratic Party
220 Hillsborough Street
Raleigh, NC 27603

MUR 7780

Complainant,

v.

Senator Thom Tillis
P.O. Box 97396
Raleigh, NC 27624

Thom Tillis Committee and Collin McMichael, Treasurer
P.O. Box 97396
Raleigh, NC 27624

North Carolina Republican Party and Zachary Crotts, Treasurer
1506 Hillsborough Street
Raleigh, NC 27605

Respondents.

COMPLAINT

This complaint is filed with the Federal Election Commission (the “FEC” or “Commission”) pursuant to 52 U.S.C. § 30109(a)(1) against Senator Thom Tillis; his principal campaign committee, Thom Tillis Committee (the “Tillis campaign”), and its treasurer, Collin McMichael, in his official capacity;¹ and against the North Carolina Republican Party (the “NC

¹ Federal Election Commission, Thom Tillis Committee, Statement of Organization, filed August 3, 2020, <https://docquery.fec.gov/pdf/783/202008039261203783/202008039261203783.pdf>.

Republican Party”) and its treasurer, Zachary Crofts, in his official capacity (together, “Respondents”).²

The NC Republican Party distributed a robocall on August 6, 2020, recorded by Senator Tillis. The call begins with Senator Tillis stating, “Hello, this is Senator Thom Tillis. I’m calling on behalf of the Republican Party.” Yet, somehow, the call ends with *Senator Tillis himself* saying, “This call was paid for by the North Carolina Republican Party. It was not authorized by any candidate or candidate’s committee.” The robocall was distributed within 90 days of the general election for U.S. Senate and clearly identifies a candidate for U.S. Senate, Senator Tillis, thereby triggering the FEC’s coordination rules. Assuming there was a cost to distribute the robocall, the NC Republican Party was required by the Federal Election Campaign Act of 1971 (“the Act”) and FEC regulations to note in the disclaimer that the call was authorized by Senator Tillis. Further, both the NC Republican Party and the Tillis Campaign were required to treat the cost of the call as either an in-kind contribution or a coordinated party expenditure. Respondents’ failure to do so appears to violate the Act and FEC regulations.

A. FACTUAL BACKGROUND

Senator Thom Tillis is a current U.S. Senator from North Carolina and the Republican nominee for re-election to the U.S. Senate in North Carolina in the general election on November 3, 2020.³ The NC Republican Party is a state political party committee registered with the FEC.⁴

² Federal Election Commission, North Carolina Republican Party, Statement of Organization, filed January 16, 2020, <https://docquery.fec.gov/pdf/095/202001169167206095/202001169167206095.pdf>.

³ Federal Election Commission, Thom Tillis Committee, Statement of Organization, filed August 3, 2020, <https://docquery.fec.gov/pdf/783/202008039261203783/202008039261203783.pdf>.

⁴ Federal Election Commission, North Carolina Republican Party, Statement of Organization, filed January 16, 2020, <https://docquery.fec.gov/pdf/095/202001169167206095/202001169167206095.pdf>.

On August 6, 2020, the NC Republican Party disseminated a robocall in North Carolina (the “Robocall”).⁵ The speaker of the Robocall identified himself as Senator Tillis and explained that the call was from the NC Republican Party: “Hello, this is Senator Thom Tillis. I’m calling on behalf of the North Carolina Republican Party.”⁶ Senator Tillis then recommended that call recipients access information regarding COVID-19 from the North Carolina Department of Health and Human Services.⁷ At the end of the Robocall, Senator Tillis provided the following disclaimer: “This call is paid for by the North Carolina Republican Party. It was not authorized by any candidate or candidate’s committee.”⁸ As the Robocall was disseminated in North Carolina on August 6, 2020, it was disseminated in Senator Tillis’s jurisdiction, 89 days before Senator Tillis’s general election.

B. LEGAL ANALYSIS

The available facts suggest that the Robocall was a coordinated communication under the Act and FEC regulations. However, Respondents failed to treat the Robocall as a party coordinated communication and failed to disclose that Senator Tillis authorized the Robocall in its disclaimer.

If a state party committee pays for a communication that meets the FEC’s three-pronged “party coordinated communication” test, then that communication must be treated either as a coordinated party expenditure that counts towards the political party committee’s coordinated spending limit or as an in-kind contribution to the benefitting candidate.⁹ Further, the disclaimer

⁵ A copy of the Robocall is available here: <https://www.youtube.com/watch?v=ijhnDxZKpc>.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ 11 C.F.R. § 109.37(a), (b)(1),(2).

on the communication must clearly indicate that the communication was authorized by the benefitting candidate.¹⁰

A communication satisfies the “party coordinated communication” three-pronged test if: (1) the communication is paid for by a political party committee or its agent (the “payment prong”)¹¹; (2) it meets one of an enumerated list of content standards (the “content prong”), which include a public communication that refers to a clearly identified Senate candidate that is distributed in the candidate’s jurisdiction 90 days or fewer before that candidate’s general election¹²; and (3) it satisfies any one of an enumerated list of conduct standards that establish coordination occurred (the “conduct prong”), which include the material involvement of the candidate or his candidate committee in the content or distribution of the advertisement.¹³

The Robocall appears to satisfy all three prongs of the party coordinated communication test and, therefore, likely resulted either in a coordinated party expenditure for the Party or an in-kind contribution from the Party to the Tillis campaign.

First, as long as there was any cost whatsoever to the Robocall, the Robocall satisfies the payment prong of the party coordinated communication test. The disclaimer of the Robocall clearly states that it was paid for by the NC Republican Party, which is a political party committee.

Second, the Robocall also appears to meet the content prong of the party coordinated communication test. As noted above, a “public communication” that refers to a clearly identified Senate candidate and that is distributed in the candidate’s jurisdiction 90 days or fewer before

¹⁰ *Id.* § 110.11(d)(ii)(2).

¹¹ *Id.* § 109.37(a)(1).

¹² *Id.* § 109.37(a)(2)(iii)(A).

¹³ *Id.* §§ 109.37(a)(3); 109.21(d)(2).

that candidate's general election meets the content prong. A "public communication" includes a "telephone bank to the general public," defined as more than 500 telephone calls of an identical or substantially similar nature within any 30-day period.¹⁴ Telephone calls are substantially similar when they "include substantially the same template or language, but vary in non-material respects such as communications customized by the recipient's name, occupation, or geographic location."¹⁵ Accordingly, a recorded robocall that is sent to over 500 people within any 30-day period is a public communication. Thus, the Robocall is a public communication (provided it was distributed to over 500 people) that refers to a clearly identified Senate candidate, Senator Tillis, and was distributed in Senator Tillis's jurisdiction of North Carolina, within 90 days of his general election.

Third, the Robocall satisfies the conduct prong of the party coordinated communication test. By narrating the Robocall, Senator Tillis was clearly materially involved in its content.

Accordingly, based on available facts, the Robocall appears to meet all three prongs of the FEC's party coordinated communication test under 11 C.F.R. § 109.37(a), and thus Respondents are required to treat the Robocall as either a coordinated party expenditure or an in-kind contribution. However, Respondents' failure to include the proper disclaimer on the Robocall indicates that they have not treated the Robocall as either. Political committees, including party committees and candidate committees, are required to include a disclaimer on their public communications.¹⁶ Where the communication is authorized by a federal candidate

¹⁴ *Id.* §§ 100.26; 100.28.

¹⁵ *Id.* § 100.28.

¹⁶ 11 C.F.R. § 110.11(a)(1).

but paid for by another person, the disclaimer must state that the communication was authorized by the candidate and paid for by such other person.¹⁷

The disclaimer on the Robocall is spoken by Senator Tillis himself and says, “This call is paid for by the North Carolina Republican Party. *It was not authorized by any candidate or candidate’s committee.*” The Robocall was also clearly authorized by Senator Tillis as he is the person speaking. Accordingly, the Robocall was required to include a disclaimer stating that the Robocall was paid for by the Party and authorized by Senator Tillis. By failing to disclose that Senator Tillis authorized the Robocall, Respondents have violated 11 C.F.R. § 110.11(b)(2). Further, Respondents’ failure to properly disclose that Senator Tillis had authorized the Robocall further indicates that Respondents are not treating the Robocall as a coordinated party expenditure or an in-kind contribution.¹⁸

REQUESTED ACTION

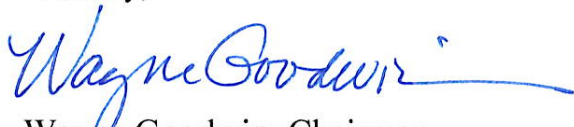
There is clear reason to believe that Respondents have violated the Act and Commission regulations. Senator Tillis claimed in the Robocall’s disclaimer that no candidate had authorized the Robocall, although he himself had authorized it, as demonstrated by the fact that he recorded the disclaimer. Moreover, Respondents’ failure to indicate that Senator Tillis authorized the Robocall suggests that Respondents have not properly treated the Robocall as a party coordinated communication or an in-kind contribution. Based on the foregoing information, I respectfully request that the Commission conduct an immediate investigation of the Party’s likely coordination with Senator Tillis and the Tillis campaign on the Robocall. Further, the Commission should impose appropriate sanctions for any and all violations, enjoin Respondents

¹⁷ *Id.* § 110.11(b)(2);

¹⁸ *See id.* § 110.11(b)(2), (d)(2).

from any and all violations in the future, and impose such additional remedies as are necessary and appropriate to ensure compliance with the Act.

Sincerely,



Wayne Goodwin, Chairman
North Carolina Democratic Party
220 Hillsborough Street
Raleigh, NC 27603

SUBSCRIBED AND SWORN to before me this 12th day of August, 2020.


Notary Public

My Commission Expires:

12/09/2024

