



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 10, 2022

BY ELECTRONIC MAIL

Roger W. Knight, P.A.
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RE: MUR 7780
Thom Tillis Committee and
Collin McMichael in his official
capacity as treasurer
Senator Thom Tillis

Dear Mr. Knight:

On August 20, 2020, the Federal Election Commission notified your clients, Tillis Committee and Collin McMichael in his official capacity as treasurer and Senator Thom Tillis, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on April 28, 2022, voted to dismiss the allegation in this matter. The Commission closed the matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. *See Disclosure of Certain Documents in Enforcement and Other Matters*, 81 Fed. Reg. 50,702 (Aug. 2, 2016).

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

Sincerely,

Peter G. Blumberg

Peter G. Blumberg
Assistant General Counsel

Enclosure
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENTS:** Thom Tillis Committee and Collin McMichael MUR 7780
6 in his official capacity as Treasurer
7 Senator Thom Tillis
8 North Carolina Republican Party and
9 Zachary Crotts in his official capacity as Treasurer
10

11 **I. INTRODUCTION**

12 The Complaint alleges that Respondents — Senator Thom Tillis, Thom Tillis Committee
13 and Collin McMichael in his official capacity as Treasurer (the “Tillis Committee”), and the
14 North Carolina Republican Party and Zachary Crotts in his official capacity as Treasurer (the
15 “NCGOP” or “Party Committee”) — made an unreported party coordinated communication that
16 did not contain the appropriate disclaimer in violation of the Federal Election Campaign Act of
17 1971, as amended (“the Act”). According to the Complaint, Tillis recorded a robocall that was
18 disseminated by the NCGOP on August 6, 2020, less than 90 days before the general election.
19 Tillis concluded the recording with a disclaimer, stating that the call ““was not authorized by any
20 candidate or candidate’s committee.””¹ The Complaint alleges that the disclaimer was inaccurate
21 based upon Tillis’s apparent involvement in recording the call.

22 Respondents argue that the Commission should dismiss this matter. NCGOP admits that
23 the call was a coordinated party expenditure and did not contain an accurate disclaimer but that it
24 would report the expenditure in its upcoming September Monthly Report.² The NCGOP
25 maintains that its actions constituted “harmless error,” as no reasonable person would think that

¹ Compl. at 3 (Aug. 14, 2020) (noting availability of robocall at N.C. Democratic Party, *Tillis NCGOP Voicemail*, YOUTUBE (Aug. 8, 2020), <https://www.youtube.com/watch?v=ijjhnDxZKpc>).

² N.C. Republican Party Resp. at 1 (Sept. 3, 2020) (“NCGOP Resp.”).

1 Tillis did not authorize a message that he personally recorded for the Party Committee.³ The
2 Tillis Committee also admits that Senator Tillis recorded the robocall but contends that Tillis had
3 no personal knowledge regarding the distribution of the robocall and understood that the Party
4 Committee would be following all applicable federal and state laws.⁴ On October 20, 2020, the
5 NCGOP disclosed a coordinated party expenditure for a robocall totaling \$2,550 in its
6 2020 October Monthly Report.⁵

7 Given the low-dollar amount of the robocall, this matter does not appear to warrant the
8 further use of the Commission’s limited resources. Therefore, the Commission exercises its
9 prosecutorial discretion and dismisses the allegations that the NCGOP failed to timely report a
10 coordinated party expenditure in violation of 52 U.S.C. § 30104(b)(4) and 11 C.F.R. § 104.3(b)
11 and that NCGOP did not include an accurate disclaimer in violation of 52 U.S.C. § 30120(a)(2)
12 and 11 C.F.R. § 110.11(d)(2).⁶

13 **II. FACTUAL SUMMARY**

14 Tillis was the incumbent candidate for U.S. Senate from North Carolina in 2020, and
15 Thom Tillis Committee is his principal campaign committee.⁷ Tillis won the Republican

³ *Id.*

⁴ Counsel for Senator Tillis has indicated that the Response of the Tillis Committee would also cover him individually. Email from Roger Knight, Counsel for Thom Tillis, to CELA, FEC (Oct.21, 2020).

⁵ NCGOP 2020 October Monthly Report at 899 (Oct. 20, 2020) (“2020 October Monthly Report”); *see also* NCGOP Amended 2020 October Monthly Report at 922 (Sept. 16, 2021) (“Amended 2020 October Monthly Report”).

⁶ *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

⁷ Thom Tillis, Amended Statement of Candidacy 2020 (Aug. 3, 2020).

1 primary on March 3, 2020, and the general election on November 3.⁸ The NCGOP is registered
 2 as the Republican state party committee in North Carolina.⁹

3 In the spring of 2020, Tillis recorded a robocall message at the request of the NCGOP.¹⁰
 4 According to the Complaint, on August 6, 2020, within 90 days of the general election, the
 5 NCGOP disseminated the robocall in North Carolina,¹¹ the full transcript of which was:

6 Hello. This is Senator Thom Tillis. I'm calling on behalf of the North
 7 Carolina Republican Party to make sure you have the information you need
 8 to protect the physical and economic health of your family during the
 9 COVID-19 outbreak. For medical guidance, the North Carolina
 10 Department of Health and Human Services has the information on its
 11 website. That website is www.ncdhhs.gov. Please reach out to that website
 12 and other sources to protect yourself and your family. This call was paid
 13 for by the North Carolina Republican Party. It was not authorized by any
 14 candidate or candidate's committee.¹²

15 The NCGOP acknowledges that the call was a coordinated party expenditure and
 16 reported a \$2,550 disbursement for a robocall on September 15 in its 2020 October Monthly
 17 Report.¹³ Although we cannot definitively conclude that the robocall the NCGOP reported in
 18 October is the same as the one at issue, it is the only robocall the Party Committee reported as an

⁸ Compl. at 2; *03/03/2020 Official Local Election Results – Statewide, U.S. Senate*, N.C. STATE BD. OF ELECTIONS, https://er.ncsbe.gov/?election_dt=03/03/2020&county_id=0&office=FED&contest=2867 (last accessed on Feb. 17, 2021); *11/03/2020 Official Local Election Results – Statewide, U.S. Senate*, N.C. STATE BD. OF ELECTIONS, https://er.ncsbe.gov/?election_dt=11/03/2020&county_id=0&office=FED&contest=1374 (last accessed on Feb. 17, 2021).

⁹ NCGOP, Statement of Organization at 2 (Aug. 17, 2020).

¹⁰ Resp. of Thom Tillis Committee and Collin McMichael in his official capacity as Treasurer at 1 (Oct. 16, 2020) (“Tillis Resp.”).

¹¹ Compl. at 2. August 6, 2020, was 89 days before the November 3 general election. NCGOP states that the robocall had been running “for some time” prior to August 6. NCGOP Resp. at 1.

¹² *Supra* note 1; *see also* NCGOP Resp. at 1.

¹³ NCGOP Resp. at 1; Amended 2020 October Monthly Report at 922.

1 itemized coordinated party expenditure in 2020.¹⁴ The NCGOP did not report any other
 2 coordinated party expenditures in support of Tillis for the 2020 cycle.¹⁵

3 **III. LEGAL ANALYSIS**

4 **A. The Commission Dismisses the Allegation that the NCGOP Failed to Timely** 5 **Report a Coordinated Party Expenditure**

6 Political committees must file reports of receipts and disbursements as set forth in the Act
 7 and Commission regulations.¹⁶ A payment by a political party committee for a communication
 8 that is coordinated with a candidate, and that is not otherwise exempt, must be reported by the
 9 political party committee making the payment as either an in-kind contribution or a coordinated
 10 party expenditure.¹⁷ The authorized committee of the candidate on whose behalf the coordinated
 11 party expenditures are made does not report the expenditures as contributions.¹⁸

12 The NCGOP disseminated the robocall on August 6, 2020, but failed to timely and
 13 accurately report it. A monthly filer such as NCGOP should have reported an August 2020
 14 coordinated party expenditure on its September monthly report as either as (1) a coordinated

¹⁴ Schedule F is used to report “itemized coordinated party expenditures made by political party committees or designated agent(s) on behalf of candidates for federal office”; the NCGOP made Schedule F disclosures on two reports in 2020. *See* Amended 2020 October Monthly Report at 922 (reporting the robocall in support of Tillis and coordinated media in support of a House candidate); NCGOP 2020 Amended Post-General Report at 1,264 (Jan. 5, 2021) (reporting coordinated mail in support of a House candidate).

¹⁵ *See* Amended 2020 October Monthly Report at 4, 922 (reflecting that the coordinated party expenditures reported in the October report were the NCGOP’s only such expenditures for the year); N.C. Republican Party Disbursements, filtered for “2019-2020” and “Tillis,” FEC, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00038505&recipient_name=tillis&two_year_transaction_period=2020 (last accessed Feb. 11, 2021). The NCGOP also reported a \$491,392 disbursement to American Media & Advocacy with the description “Coordinated Media, S4NC00162” in support of Tillis on Schedule B of its 2020 October Monthly Report. *See* Amended 2020 October Monthly Report at 801. Schedule B is used by political party committees to disclose Federal Election Activity, whereas Schedule F is used to disclose coordinated party expenditures. It is unclear from the available information whether the NCGOP disclosed this activity on Schedule B in error.

¹⁶ 52 U.S.C. § 30104(a); 11 C.F.R. § 104.5.

¹⁷ 11 C.F.R. § 109.37(b); *see also id.* part 100, subpart C and E (identifying exceptions to the definition of “Contribution” and “Expenditure” that are exempt under section 109.37(b)).

¹⁸ *See id.* § 104.3(a)(3)(iii).

1 party expenditure;¹⁹ or (2) a coordinated party expenditure and a debt.²⁰ The NCGOP did
2 neither; rather, in its October Monthly Report, the state party disclosed only a \$2,550
3 expenditure on September 15, 2020, for a robocall in support of Tillis.²¹ Without the debt and
4 expenditure being reported for the period in which the robocall was disseminated, a member of
5 the public would be left to conclude that the coordinated party expenditure that the NCGOP
6 reported occurred in September. However, because this is the only reported coordinated
7 expenditure the NCGOP made in support of Tillis in 2020, the robocall reported in October
8 appears to be the one that the Party Committee acknowledges disseminating in August.²²

9 In light of the modest amount in violation, although the NCGOP reported the coordinated
10 party expenditure incompletely and in the wrong month, this matter does not warrant the
11 additional use of the Commission's limited resources, and the Commission dismisses as a matter
12 of prosecutorial discretion the allegation that the NCGOP violated 52 U.S.C. § 30104(b)(4) and
13 11 C.F.R. § 104.3(b).²³

¹⁹ Reports are to include coordinated party expenditures in the reporting period. 52 U.S.C. § 30104(b)(4)(H)(iv), (b)(6)(B)(iv); 11 C.F.R. § 104.3(b)(1)(viii), (3)(viii).

²⁰ See 52 U.S.C. § 30104(b)(8); 11 C.F.R. §§ 104.3(d) (requiring committees to disclose amount and nature of debt), 104.11(b) (requiring that debt or obligation to be disclosed on date that such debt or obligation is incurred) *see also How to Report: Coordinated Party Expenditures*, FEC, <https://www.fec.gov/help-candidates-and-committees/filing-political-party-reports/coordinated-expenditures/> (indicating that when a coordinated party communication is disseminated in one reporting period and then paid for in a later reporting period, the committee reports the coordinated expenditure on Schedule F as a memo entry and a debt on Schedule D (cross-referencing Schedule F) and indicates the date of original service/dissemination in the purpose field.) (last visited Feb. 17, 2021).

²¹ See *supra* note 13.

²² See *supra* note 15 and accompanying text.

²³ See *Heckler*, 470 U.S. at 831; *see also* Factual & Legal Analysis at 7, MUR 7417 (Indivisible Washington's 8th District, *et al.*) (exercising prosecutorial discretion and dismissing a failure to report an in-kind contribution "based on the likely small amounts at issue").

1 **B. The Commission Dismisses the Allegation that the NCGOP Did Not Include**
2 **an Accurate Disclaimer in the Robocall**

3 All public communications by a political committee require a disclaimer.²⁴ A
4 “disclaimer” is a statement that must identify who paid for the communication; if the
5 communication is authorized by a candidate, an authorized committee of a candidate, or an agent
6 of the candidate or committee, but is paid for by any other person, the disclaimer must clearly
7 state that the communication is paid for by such other person and authorized by such candidate,
8 authorized committee or agent.²⁵ In addition to this general disclaimer rule, Commission
9 regulations specify that communications treated as coordinated party expenditures and made
10 with the approval of the party’s general election candidate, that candidate’s committee, or agent
11 of either, must both identify the party committee that paid for the communication and state that
12 the candidate authorized the communication.²⁶

13 Because the robocall was a coordinated party expenditure made with the approval of the
14 party’s general election senatorial candidate or his committee,²⁷ it should have identified not
15 only the party committee that paid for the communication but also stated that Tillis or the Tillis
16 Committee authorized the communication. Instead, the robocall concluded with the sentence:
17 “[This call] was not authorized by any candidate or candidate’s committee.”²⁸ The NCGOP

²⁴ See 11 C.F.R. § 110.11(a)(1) (scope of disclaimer provision); *see also id.* § 100.26 (defining “public communication”).

²⁵ See 52 U.S.C. § 30120(a)(2); 11 C.F.R. § 110.11(b)(2).

²⁶ 11 C.F.R. § 110.11(d)(2).

²⁷ For the 2020 general election, a North Carolina state party committee was limited to making \$849,000 in coordinated party expenditures with its senate candidate. See 11 C.F.R. § 109.32(b)(2); Price Index Adjustments for Expenditure Limitations & Lobbyist Bundling Disclosure Threshold, 85 Fed. Reg. 9,772, 9,774 (Feb. 20, 2020). The NCGOP’s spending did not approach or exceed that limit. See *supra* note 15.

²⁸ *Supra* note 1.

1 acknowledges that the robocall's disclaimer was erroneous.²⁹ Nevertheless, in light of the low
2 reported cost of the robocall, this matter does not appear to warrant the further use of the
3 Commission's limited resources for this allegation. Thus, the Commission dismisses as a matter
4 of prosecutorial discretion the allegation that the NCGOP violated 52 U.S.C. § 30120(a)(2) and
5 11 C.F.R. § 110.11(d)(2).³⁰

²⁹ NCGOP Resp. at 1; *see also* Tillis Resp. at 2.

³⁰ *See Heckler*, 470 U.S. at 831; Factual & Legal Analysis at 12, MUR 6270 (Rand Paul, *et al.*) (exercising prosecutorial discretion and declining to investigate to determine, as between a candidate committee and a non-profit, who sent emails with flawed disclaimers because of the likely *de minimis* associated costs).