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APRIL 22, 2022 3:12 PM

OFFICE OF GENERAL COUNSEL

From: [Palatucci, William](#)
To: [Enforcement Complaints](#)
Cc: ["Dan Scharfenberger"](#)
Subject: Complaint filed against Phil Rizzo for Congress (New Jersey 7th Congressional District)
Date: Friday, April 22, 2022 3:13:04 PM
Attachments: [image001.png](#)
[D. Scharfenberger emails from voters - 2022-04-21 15.23.37.pdf](#)
[Rizzo Robo Call 4-19-22.m4a](#)
[Notarization Kean for Congress - 2022-04-22 14.53.25.pdf](#)

April 22, 2002

Submitted electronically and via U.S. Mail

Office of the General Counsel
Federal Election Commission
1050 First Street, NE
Washington, DC 20563

RE: Rizzo for Congress – Use of robocalls without required paid for disclaimer

Dear General Counsel:

This office writes to file this complaint regarding violations of the Federal Campaign Act of 1971, as amended (the "Act") by Phil Rizzo for Congress ("Rizzo campaign"), the principal campaign account of Phil Rizzo, a candidate for Congress in the June primary for the 7th congressional district in New Jersey ("NJ-CD7"). David Satterfield is the listed treasurer of Phil Rizzo for Congress with the address of 228 S. Washington Street, Alexandria, Virginia 22314. As outlined below, this complaint provides facts which clearly establish that the Rizzo campaign has violated the Act and the regulations of the Federal Election Commission ("FEC") by expending campaign funds without the proper paid for disclaimer with the express intention of creating confusion for voters of NJ-CD7 in the upcoming June primary.

McCarter & English, LLP represents Tom Kean, Jr., a Republican candidate for Congress in NJ-CD7 running in the June primary.

The proofs provided here include the following:

- An actual recording of the robocall;
- The telephone number captured by voters from their home caller identification device (973.264.0052);
- A screenshot of the automated response from the Rizzo campaign for anyone attempting to call the telephone number from their caller ID device; and,
- Actual complaints from voters in NJ-CD7 who received the robocall from the Rizzo campaign.

Specifically, between the hours of approximately 11:00 p.m. on April 19, 2022 and 12:30 a.m. on April 20, 2022, the Rizzo for Congress campaign initiated so-called robocalls via an automatic telephone dialing systems ("ATDS") to likely Republican voters in the New Jersey primary. The robocall (copy of the recording attached here) is a negative attack ad against Tom Kean, Jr. Upon information and belief, the voice of the person recording the robocall is candidate Phil Rizzo. The recording mentions Tom Kean by name four times, references a website titled the RealTomKean.com, and then concludes without any identification of the caller, and, most importantly, without providing the required FEC disclaimer which must identify who paid for the call, state whether the call is authorized by any candidate or candidate's committee, and provide the committee's street address, website address or phone number. Besides the negative message of the call, the obvious intention of the late-night call is to annoy and confuse potential primary voters or to dissuade them from even participating in the June election.

As the Act, FEC regulations and the FEC's own Campaign Guide states, "Disclaimers must be presented in a clear and conspicuous manner to give the reader, observer, or *listener* adequate notice of the identity of the person or political committee that paid for the communication." 110.11 (c)(1) (Page 74) (Emphasis added.) This includes "public communications" such as emails, phone banks and robocalls to more than 500 recipients. The clear intent of the Act and the FEC's regulations is to prohibit this exact situation where the source of the person or entity producing and paying for the communication is hidden from voters.

Therefore, based on the foregoing information, there is clear evidence establishing a violation of the Act and to support an investigation and fine by the FEC against Phil Rizzo for Congress.

Please do not hesitate to contact me with any questions or the need for additional information regarding this important matter.

Respectfully submitted,

William J. Palatucci

William J. Palatucci, Esq.
Counsel for Kean for Congress, Inc.

Enclosures



William J. Palatucci | Partner

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We are committed to helping you navigate the COVID-19 crisis. Please visit our [Coronavirus Resource Center](#) for important updates providing business guidance throughout this pandemic. For immediate questions, please email your McCarter contact or our [COVID-19 Taskforce](#).

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AUDIO FILE
RIZZO ROBO CALL

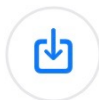


Click icon to listen to audio file

< 870



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Today 9:38 AM

Hi, this is Phil Rizzo for Congress Campaign, we saw that we just missed your call how can I help?

Subject

Text Message



Palatucci, William

From: Dan Scharfenberger <dan@tomkean.com>
Sent: Wednesday, April 20, 2022 1:24 PM
To: Palatucci, William
Cc: Harrison Neely
Subject: Rizzo Robo Call
Attachments: Rizzo Robo Call 4-19-22.m4a; Rizzo Phone Number Screenshot.jpg

****External Message****

*Recording of the Robo Call and proof the number is associated with Rizzo campaign attached

Robo Call Number: 973-264-0052

Complaints We Received:

Sender - René Rovtar < >

Subject - Robocalls in the middle of the night not appreciated

Date - Wed, Apr 20, 2022 at 9:16 AM

Message -

Good morning, Last night we received two robocalls encouraging us to vote for Tim Kean in the upcoming primary election. Both calls were received between 12:15 and 12:40 a.m. - You woke me up from a sound sleep and, since the only calls that come in the middle of the night are typically from a family member in distress, these calls were upsetting and generated anxiety. The caller ID indicated they were generated from a Madison number. I would ask that you please take a closer look at your campaign operations to ensure that this does not happen again. I don't think you gain many votes by waking people up in the middle of the night.
Sincerely, René Rovtar

Sender - Kelly Elardo < >

Subject - Calls

Date - Wed, Apr 20, 2022 at 9:18 AM

Message -

Good morning.

At 11:17 pm on Tuesday, April 19th your automated message called my home at My husband wakes at 4 am to get up for his job. He was asleep and awoken. My children were awoken as was I. Since this was a number that looked local, I assumed it was a town emergency. Imagine my surprise when it was a pre-recorded message from Tom Kean, Jr talking about critical race theory. I understand it is campaign season but if you are trying to reach families who have eligible voters and would like them to hear your message, I suggest you set the parameters for these automated calls to be no later than 7pm. Unsolicited calls are typically unappreciated regardless but I understand why so many use this as an option to gain attention. This was not well received in my home at such a late hour.

Please take our number off your list for calls.

Thank you,

Mrs. Kelly Elardo

Sender - Not Provided

Subject - Not Provided

Date - Wed, Apr 20, 2022 at 7:53 AM

Message -

Hi You or your adversary's campaign called me at midnight last night. That is too late please leave me alone at that time of night it is not the time for politics

Sender - Joann McDevitt >

Subject - Late night phone calls

Date - April 19, 2022 at 11:41:00 PM EDT

Message -

I received a recorded phone call tonight from your campaign at 11:30 pm. This is excessive please take my phone number off your call list immediately.

Joann McDevitt

Sender - Carole Brady <

Subject - Not Provided

Date - April 20, 2022 at 6:52:17 AM EDT

Message -

I am not writing to support and DO NOT add me but need to know which opponent is making harassing phone calls about Kean - had another at 10:52pm last night and want to find out. No paid for by ... at the end.

--

Dan Scharfenberger
Campaign Manager I Kean for Congress

TomKean.com

VERIFICATION

The complainant hereby verifies that the statements made in the attached Complaint are, upon their information and belief, true.

Sworn to pursuant to 18 U.S.C. §1001.

For – Kean for Congress, Inc.
P.O. Box 999
Edison, NJ 08818

William J. Palatucci, Campaign Counsel
McCarter & English, LLP
Four Gateway Center
100 Mulberry Street
Newark, New Jersey 07102

Sworn to and subscribed before me this 22nd day of April, 2022.

Notary Public

GERTRUDE LINDSAY
NOTARY PUBLIC OF NEW JERSEY
Commission # 2005616
My Commission Expires 12/27/2025