



FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 15, 2023

By Electronic Mail

Thomas Basile, Esq.
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RE: MUR 7987
Phil Rizzo for Congress and
David Satterfield in his official
capacity as treasurer

Dear Mr. Basile:

On April 26, 2022, the Federal Election Commission notified your client, Phil Rizzo for Congress and David Satterfield in his official capacity as treasurer (the "Committee"), 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 client at that time.

Upon review of the allegations contained in the complaint and information supplied by you on behalf of your client, on January 24, 2023, the Commission found that there is reason to believe that the Committee violated 52 U.S.C. § 30120 and 11 C.F.R. § 110.11 by failing to include required disclaimers on public communications. The Factual and Legal Analysis, which provides a basis for the Commission's finding, is enclosed for your information.

Your client may submit any factual or legal materials that you believe is relevant to the Commission's consideration of this matter. Please submit such materials to the Office of the General Counsel within 15 days of receipt of this notification. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. *See* 52 U.S.C. § 30109(a)(4).

Please note that your client has a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

If your client is interested in pursuing pre-probable cause conciliation, you should make such a request by letter to the Office of the General Counsel. *See* 11 C.F.R. § 111.18(d). Upon

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receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued in order to complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been delivered to the Committee.

Requests for extensions of time are not routinely granted. Requests must be made in writing at least five days prior to the due date of the response and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days. Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/em/respondent_guide.pdf.

This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B), (a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

If you have any questions, please contact Nicholas Mueller, the attorney assigned to this matter, or Assistant General Counsel Ana J. Peña-Wallace, at (202) 694-1650.

On behalf of the Commission,



Dara Lindenbaum
Chair

Enclosure
Factual and Legal Analysis

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENT:** Phil Rizzo for Congress and David Satterfield **MUR 7987**
4 in his official capacity as treasurer

5 **I. INTRODUCTION**

6 This matter arises from a Complaint alleging that Phil Rizzo for Congress and David
7 Satterfield in his official capacity as treasurer (the “Committee”) violated the Federal Election
8 Campaign Act of 1971, as amended (the “Act”), by failing to include required disclaimers on
9 robocalls. Respondent acknowledges that the Committee was responsible for the calls and that
10 the calls did not include a disclaimer.¹

11 In the present matter, Respondent does not dispute that a violation of the Act occurred.
12 Accordingly, the Commission finds reason to believe that the Committee violated 52 U.S.C.
13 § 30120 and 11 C.F.R. § 110.11 by failing to include required disclaimers on public
14 communications.

15 **II. FACTUAL BACKGROUND**

16 Phil Rizzo was a candidate for New Jersey’s seventh congressional district in the 2022
17 primary election.² Phil Rizzo for Congress is his principal campaign committee.³

18 The Complaint in this matter alleges that, between the hours of approximately 11:00 p.m.
19 on April 19, 2022, and 12:30 a.m. on April 20, 2022, the Rizzo for Congress campaign made
20 robocalls to likely Republican voters in the New Jersey primary consisting of an attack ad
21 against Rizzo’s opponent, Tom Kean, that directed voters to visit the website

¹ Resp. at 1-2 (May 18, 2022).

² Phil Rizzo, Statement of Candidacy (Jan. 12, 2022).

³ Phil Rizzo for Congress, Amended Statement of Organization (Jan. 12, 2022).

1 “RealTomKean.com.”⁴ The Complaint includes an audio file of the call that appears to begin
2 part-way into the call. The Commission’s Office of General Counsel transcribed the audio file
3 attached to the Complaint as follows:

4 . . . energy policies, weakening our election laws, allowing
5 biological men in women’s private spaces. Tom Kean wants to
6 allow our kids to be indoctrinated. Tom Kean wants the price of
7 homes and cars to skyrocket. Tom Kean wants to make our
8 elections less secure. Tom Kean wants to put the safety of women
9 and girls at risk. Visit RealTomKean.com to learn more.

10 The Complaint alleges that “the obvious intention of the late-night call is to annoy and confuse
11 potential primary voters or to dissuade them from even participating in the June election.”⁵
12 Further, the Complainant alleges that the voice in the call was that of Phil Rizzo, but that the call
13 did not identify the caller or include any disclaimer stating who paid for it.⁶

14 In support of its allegations, the Complaint attached: (1) a partial audio file of the call;⁷
15 (2) a screenshot of an automated response allegedly sent by the Committee when someone called
16 the phone number associated with the robocall;⁸ and (3) emails received by the Kean campaign
17 from individuals complaining about the late night calls.⁹

18 Respondent acknowledges that the calls were sponsored by the Committee and that they
19 did not contain a disclaimer.¹⁰ Nonetheless, Respondent urges the Commission to exercise
20 prosecutorial discretion and dismiss the allegations.¹¹ Respondent states that the call script sent

⁴ Compl. at 1 (Apr. 22, 2022).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*, Attach. 1.

⁸ *Id.*, Attach. 2.

⁹ *Id.*, Attach. 3.

¹⁰ Resp. at 1.

¹¹ *Id.*

1 to the vendor contained the necessary disclaimer, but that the vendor failed to include the
2 disclaimer in the recording, “which was not presented to the Rizzo [c]ampaign for review prior
3 to its dissemination.”¹²

4 Respondent states that the Committee “has since permanently terminated the use of the
5 vendor’s call services” but provides no information as to whether this termination occurred
6 before or after the filing of the complaint, who the vendor was, or whether the vendor continued
7 to be retained for other services.¹³

8 Respondent also states that the Committee “never misrepresented or affirmatively
9 concealed its sponsorship of the call.”¹⁴ Respondent notes that “the phone number associated
10 with the call was easily traceable to the Rizzo [c]ampaign” and that listeners were directed to
11 www.RealTomKean.com, which included a disclaimer disclosing that it is “Paid for by Phil
12 Rizzo for Congress.”¹⁵

13 **III. LEGAL ANALYSIS**

14 The Act and Commission regulations require placement of “clear and conspicuous”
15 disclaimers on all public communications made by a political committee and on public
16 communications by any person that expressly advocate the election or defeat of a clearly
17 identified federal candidate.¹⁶ For communications paid for and authorized by a candidate,
18 authorized committee of a candidate, or an agent of either, the disclaimer must clearly state that

¹² *Id.* at 2.

¹³ *Id.* at 1.

¹⁴ *Id.* at 2.

¹⁵ *Id.* Based on web archives it appears that www.RealTomKean.com did include a disclaimer in a small box at the bottom of the page containing the text: “Paid for by Phil Rizzo for Congress.” See THE REAL TOM KEAN (Apr. 4, 2022), <https://www.RealTomKean.com> [<https://web.archive.org/web/20220404185122/https://www.RealTomKean.com/>].

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

1 the communication has been paid for by the authorized committee.¹⁷ Further, a disclaimer is not
2 clear or conspicuous if it is difficult to hear or if the placement is easily overlooked.¹⁸

3 In the present matter, presented with the Complaint and attachments thereto, Respondent
4 does not dispute that the robocall in question should have, but did not, include a disclaimer as
5 required by the Act and Commission regulations.¹⁹

6 Accordingly, the Commission finds reason to believe that the Committee violated
7 52 U.S.C. § 30120 and 11 C.F.R. § 110.11(b) by failing to include required disclaimers on public
8 communications.

¹⁷ 11 C.F.R. § 110.11(b)(1).

¹⁸ *Id.* § 110.11(c)(1).

¹⁹ Resp. at 1