

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2  
 3 In the Matter of )  
 4 )  
 5 Phil Rizzo for Congress and ) MUR 7987  
 6 David Satterfield in his official )  
 7 capacity as treasurer )

8 **SECOND GENERAL COUNSEL'S REPORT**

9 **I. ACTIONS RECOMMENDED**

10 (1) Take no further action as to the allegations that Phil Rizzo for Congress and David  
 11 Satterfield in his official capacity as treasurer (the "Committee") violated 52 U.S.C. § 30120 and  
 12 11 C.F.R. § 110.11 by failing to include required disclaimers on public communications;  
 13 (2) Approve the appropriate letters; and (3) Close the file.

14 **II. BACKGROUND**

15 The Complaint in this matter, filed on April 22, 2022, alleged that the Committee  
 16 violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by failing to  
 17 include required disclaimers on robocalls.<sup>1</sup> On January 24, 2023, the Commission found reason  
 18 to believe regarding that allegation, and authorized compulsory process to determine the amount  
 19 in violation.<sup>2</sup> On February 16, 2023, the Office of General Counsel ("OGC") sent the  
 20 Committee a letter informing them of the reason-to-believe finding and attaching the  
 21 Commission's Factual and Legal Analysis.<sup>3</sup> On February 28, 2023, the Commission approved a  
 22 subpoena including specific questions regarding the cost of the creation, production, distribution,  
 23 and transmission of the robocalls.<sup>4</sup>

<sup>1</sup> Compl. at 2 (Apr. 22, 2022).

<sup>2</sup> Certification ("Cert.") ¶ 2 (Jan. 30, 2023).

<sup>3</sup> RTB Notif. Letter (Feb. 16, 2023).

<sup>4</sup> Cert. (Mar. 1, 2023); Subpoena to Phil Rizzo for Congress (Mar. 3, 2023).

1           Before we could send the subpoena to the Committee, however, the Committee submitted  
2 a Response to the Commission's reason-to-believe notice and provided additional relevant  
3 information regarding the robocalls in question.<sup>5</sup> The Committee states that upon making further  
4 inquiries with the vendor that conducted the robocalls, it determined that only 75 calls were  
5 placed by the vendor at a cost of \$0.5862 per call, for a total expenditure of \$43.97.<sup>6</sup> Attached to  
6 this letter is an invoice which appears to substantiate the number and cost of the calls.<sup>7</sup> Without  
7 providing further explanation, the Committee states that the vendor "represented that [this set of  
8 robocalls] apparently was released accidentally."<sup>8</sup> The Committee's response requests pre-  
9 probable cause conciliation .<sup>9</sup>

### 10   **III. ANALYSIS**

11           In support of their request for pre-probable cause conciliation ,  
12 Respondents argue that the run of robocalls "likely did not constitute a 'public communication'  
13 because it was placed to fewer than 500 persons."<sup>10</sup> Such a limited number of calls would not  
14 qualify as a public communication based on being a "telephone bank," as defined by 11 C.F.R.  
15 § 100.28. On the other hand, the definition of public communications also includes "any other  
16 form of general public political advertising," which could encompass these robocalls.<sup>11</sup> But

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<sup>5</sup> RTB Resp. (Mar. 2, 2023).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*, Attach. 1.

<sup>8</sup> RTB Resp.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> 11 C.F.R. § 100.26. *See* Factual & Legal Analysis ("F&LA") at 3-4, MURs 5401, 5422 (Texans for Henry Cuellar) ("If automated telephone voice broadcasts were to be viewed as being somehow distinct from telephone banks, it would appear that these robocall programs nevertheless are a form of general public political advertising to which the disclaimer requirement would apply.").

1 given that the cost of the calls appears to be extraordinarily low, only \$43.97, and the available  
2 information indicates that there were only 75 calls that failed to include a disclaimer, this matter  
3 is appropriately resolved by an exercise of prosecutorial discretion.<sup>12</sup>

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taking no further action

7 instead and closing the file would be more consistent with the Commission's past practice and  
8 would further conserve Commission resources. The Commission has elected to dismiss or close  
9 the file rather than seeking to conciliate in several past matters where the cost of the robocalls  
10 lacking the appropriate disclaimer was particularly low. For instance, in MUR 7780 (Thom  
11 Tillis Committee, *et al.*), the Commission dismissed the matter, citing "the low-dollar amount of  
12 the robocall," which was \$2,550, concluding that the matter did not warrant the further use of  
13 Commission resources.<sup>13</sup> Similarly, in MUR 6721 (Beth Steele, *et al.*) an individual paid \$700  
14 to produce the message but the investigation was unable to determine the amount the committee  
15 spent on distribution of the calls.<sup>14</sup> OGC recommended no further action, noting that "robocalls  
16 are a relatively inexpensive form of communication, and there is no information to indicate that  
17 the additional amount spent was significantly larger than the \$700 spent by Steele" and the  
18 Commission voted unanimously to take no further action.<sup>15</sup>

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<sup>12</sup> *Heckler v. Chaney*, 470 U.S. 821 (1985).

<sup>13</sup> F&LA at 2, MUR 7780 (Thom Tillis Committee, *et al.*).

<sup>14</sup> Third Gen. Counsel's Rpt. at 5, MUR 6721 (Beth Steele, *et al.*).

<sup>15</sup> *Id.*; Cert. (Nov. 26, 2018), MUR 6721.

