



FEDERAL ELECTION COMMISSION
Washington, DC 20463

VIA EMAIL AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED

wpalatucci@mccarter.com

May 4, 2023

William J. Palatucci
McCarter & English, LLP
Four Gateway Center
100 Mulberry Street
Newark, NJ 07102

RE: MUR 7987

Dear Mr. Palatucci:

This is in reference to the complaint you filed with the Federal Election Commission on April 22, 2022, concerning Phil Rizzo for Congress and David Satterfield in his official capacity as treasurer (the “Committee”). Based on that complaint, on January 24, 2023, the Commission found that there was 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 and instituted an investigation of this matter. After further considering the circumstances of this matter, on May 2, 2023, the Commission determined to take no further action as to the Committee and closed the file.

The Factual and Legal Analysis, which more fully explains the basis for the Commission's decision to find reason to believe is enclosed. 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).

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 52 U.S.C. § 30109(a)(8). If you have any questions, please contact me at (202) 694-1650 or nmueller@fec.gov.

Sincerely,

Nicholas O. Mueller
Nicholas O. Mueller
Attorney

Enclosure

Factual and Legal Analysis

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

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).

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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.*

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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).

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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