

FEDERAL ELECTION COMMISSION 1050 FIRST STREET, N.E. WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	MUR 7987
Phil Rizzo for Congress, et. al.)	
)	

SUPPLEMENTAL STATEMENT OF REASONS OF VICE CHAIRMAN SEAN J. COOKSEY AND COMMISSIONERS ALLEN J. DICKERSON AND JAMES E. "TREY" TRAINOR, III

When this matter came before us after finding reason to believe, we voted to approve the recommendation of the Office of General Counsel ("OGC") to take no further action as to the allegations that Phil Rizzo for Congress and David Satterfield in his official capacity as treasurer (the "Committee") violated 52 U.S.C. § 30120 and 11 11 C.F.R. § 110.11 by failing to include required disclaimers on public communications, and to close the file. However, we write separately to express our disagreement with OGC's suggestion that a telephone bank of less than 500 calls may be regulated as a "public communication."

The Complaint in this matter, filed on April 22, 2022, alleged that the Committee violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by failing to include required disclaimers on robocalls. The Respondent acknowledged that the Committee was responsible for the calls and stated that due to a vendor error the calls did not include a disclaimer. Accordingly, on January 24, 2023, the Commission voted to find reason to believe ("RTB") that the Committee violated the Act's disclaimer requirements. Following a notification of the Commission's RTB vote, the Respondent informed the Commission that only 75 calls were placed (for a total expenditure of \$43.97). Consistent with the Commission's treatment of similar matters, OGC recommended the Commission take no further action and close the file. We voted to approve OGC's recommendation. However, buried in its recommendation, was OGC's assertion that although "[75 calls] would not qualify as a public communication based on being a 'telephone bank,' as defined by 11 C.F.R. § 100.28... the definition of public communications also includes 'any other form of general public political advertising,' which could encompass these robocalls." This is plainly an incorrect reading of the Commission's regulations.

The Commission's regulations define a "public communication" as "a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or *telephone bank to the general public, or any other form of*

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 $^{^{1}\,}MUR$ 7987, Second General Counsel's Report (GCR #2) at 2.

general public political advertising." 11 C.F.R. § 100.26 (emphasis added). "Telephone bank" is defined as "more than 500 telephone calls of an identical or substantially similar nature within any 30-day period." 11 C.F.R. § 100.28. It surely cannot be the case that 75 telephone calls, like those in this matter, fall outside the regulatory definition of "public communication" as a "telephone bank" but are nonetheless a public communication under the catch-all "general public political advertising." Common sense and basic legal canons of construction suggest otherwise.

Jean J. Cooksey	5/31/2023	
Sean J. Cooksey	Date	
Vice Chairman		
alluftalen	5/31/2023	
Allen J. Dickerson	Date	
Commissioner		
J.E. Train, The	5/31/2023	
James E. "Trey" Trainor, III	Date	

Commissioner