

OCT 9 2007

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 5887
Date Complaint Filed: December 11, 2006
Date of Notification: December 13, 2006
Date of Last Response: March 7, 2007
Date Activated: May 23, 2007
Expiration of Statute
of Limitations: July 28, 2011

COMPLAINANT:

Club for Growth

RESPONDENTS:

Republican Main Street Partnership
Republican Main Street Partnership-PAC and Sarah
Resnick, in her official capacity as treasurer
Schwarz for Congress and Robert Schuler, in his
official capacity as treasurer
Congressman Joe Schwarz

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 434
2 U.S.C. §§ 441a and 441d
11 C.F.R. § 109
11 C.F.R. § 110.6(c)(1) and (2)
11 C.F.R. § 110.11(c)(4)

INTERNAL REPORTS CHECKED:

Disclosure Reports
Additional Information

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

Club for Growth filed a complaint against Republican Main Street Partnership
("RSMP"), Republican Main Street Partnership-PAC and Sarah Resnick, in her official capacity
as treasurer ("RMSP-PAC" or the "PAC"), Schwarz for Congress and Robert Schuler, in his
official capacity as treasurer ("Schwarz Committee") and Congressman Joe Schwarz alleging

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1 various violations of the Federal Election Campaign Act of 1971, as amended (the "Act").
2 Specifically, the complaint alleges that the Schwarz Committee and RMSP-PAC coordinated
3 advertisements totaling \$91,300 for the benefit of the Schwarz Committee, resulting in excessive
4 unreported contributions by RMSP-PAC to the Schwarz Committee. The complaint also alleges
5 that RMSP-PAC and the Schwarz Committee each broadcast advertisements that failed to
6 include the proper disclaimers. Finally, the complaint alleges that both the Schwarz Committee
7 and RMSP-PAC failed to report contributions to the Schwarz Committee that were bundled
8 through RMSP-PAC.

9 As set forth in more detail below, we recommend that the Commission: (1) find reason to
10 believe that the RMSP-PAC and Sarah Resnick, in her official capacity as treasurer, violated
11 2 U.S.C. §§ 441a(a)(2) and 434(b) by making, and failing to disclose, excessive contributions to
12 the Schwarz Committee in the form of coordinated expenditures, and that the Schwarz
13 Committee and Robert Schuler, in his official capacity as treasurer, violated 2 U.S.C. §§ 441a(f)
14 and 434(b) by knowingly accepting and failing to disclose excessive contributions, (2) take no
15 action at this time with respect to Congressman Joe Schwarz, (3) dismiss the allegations that
16 Schwartz for Congress and Robert Schuler, in his official capacity as treasurer, and that RMSP-
17 PAC and Sarah Resnick, in her official capacity as treasurer, violated 2 U.S.C. § 441d by
18 violating the disclaimer provisions of the Act, (4) find no reason to believe that RMSP- PAC and
19 Sarah Resnick, in her official capacity as treasurer, and that Schwarz for Congress and Robert
20 Schuler, in his official capacity as treasurer, violated 2 U.S.C. § 441a(a)(8) by failing to report
21 earmarked contributions, (5) find no reason to believe that RMSP-PAC and Sarah Resnick, in her
22 official capacity as treasurer, violated 2 U.S.C. § 434(b)(4)(H)(iii) by failing to disclose costs
23 associated with candidate endorsements on its website as independent expenditures, and

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(6) find no reason to believe that Republican Main Street Partnership violated 2 U.S.C. § 441b by making contributions to the Schwarz Committee or making expenditures on behalf of the Schwarz Committee.

II. FACTUAL AND LEGAL ANALYSIS

A. RSMP-PAC May Have Coordinated Advertisements with the Schwarz Committee

The complaint alleges that at least \$91,300 in television and radio advertising reported by RMSP-PAC as independent expenditures were coordinated with the Schwarz campaign, and thus were excessive contributions from RMSP-PAC to the Schwarz Committee. The Act defines in-kind contributions as, *inter alia*, expenditures made by any person "in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committee, or their agents." 2 U.S.C. § 441a(a)(7)(B)(i). Section 109.21 of the Commission's regulations provides that a public communication is coordinated with a candidate, an authorized committee or agent thereof if it meets a three-part test: (1) payment by a person other than the candidate or his or her authorized committee; (2) satisfaction of one of three "content" standards in section 109.21(c); and (3) satisfaction of one of six "conduct" standards in section 109.21(d).¹

¹ The alleged coordinated expenditures for advertising totaled \$91,300, and \$89,500 of these expenditures occurred between July 14, 2006 and August 6, 2006 and, therefore, are subject to the Commission's amended coordinated communications regulations, which became effective on July 10, 2006, *Coordinated Communications*, 71 Fed. Reg. 33190 (June 8, 2006). The U.S. District Court for the District of Columbia held in *Shays III* that the Commission's revisions of the content and conduct standards of the coordinated communications regulations at 11 C.F.R. § 109.21(c) and (d) violated the Administrative Procedures Act. However, the court did not enjoin the Commission from enforcing the regulations. See *Shays v. F.E.C.* — F.Supp.2d —, 2007 WL 2616689 (D.D.C. Sept. 12, 2007) (NO. CIV.A. 06-1247 (CKK)) (granting in part and denying in part the respective parties' motions for summary judgment). In this matter, while we have not reviewed all advertisements at issue, those advertisements that we have reviewed contain express advocacy under 11 C.F.R. § 109.21(c)(3), and the conduct alleged concerns substantial discussions between RMSP-PAC and the Schwarz Committee as defined in 11 C.F.R. § 109.21(d)(3). The *Shays III* court did not specifically address any deficiencies in Sections 109.21(c)(3) and 109.21(d)(3) in its decision.

1 The complaint bases its coordination allegation on the PAC's website listing of Schwarz
2 as a member of its Advisory Board, and a statement by the PAC that it had no staff in a
3 "Miscellaneous Report" filed with the Commission. According to the complaint, "[i]t would
4 therefore appear then that the PAC Advisory Board must control the PAC's activity or at a
5 minimum provide substantial control or input in its decisions."

6 In response, RMSP-PAC submitted affidavits from Congressmen Fred Upton, Charles
7 Bass, and Tom Davis, the only members of the PAC Board at the relevant time, and from Sarah
8 Resnick, treasurer of RMSP-PAC.² All of the affidavits state that the PAC Board has sole
9 control and decision making authority to make contributions or disbursements on behalf of the
10 PAC, and that Schwarz was never a member of the PAC Board, but was just one of many
11 Republican Members who permitted their names to appear as PAC supporters.³ According to all
12 the affidavits, the PAC Board decided in early Spring 2006 to make independent expenditures in
13 Schwarz's primary race after Club for Growth announced it would challenge Schwarz in that
14 election. Thereafter, Congressman Upton took the lead in producing advertisements featuring
15 Schwarz, with Congressman Davis, but not Congressman Bass, also having involvement. In
16 their affidavits, all of the Congressmen state that they had general political conversations with
17 Schwarz, but did not discuss the PAC's expenditures with him, and Resnick also avers that she
18 did not discuss this topic with Schwarz or his Congressional or campaign staff. Moreover, the
19 affiants state, with slight variations, that Schwarz never attended a PAC Board meeting where
20 the expenditures were discussed; to the best of their knowledge, no one at the PAC asked
21 Schwarz or his staff for input in its decision making or allocation of its funds; the advertisements

² Of the four affidavits submitted by RMSP-PAC, only Congressman Upton's affidavit is notarized.

³ The Schwarz Committee states that Congressman Schwarz agreed to allow his name to be listed as a supporter of RMSP-PAC as a member of its Advisory Board, and notes that the PAC's Advisory Board consists of seven U.S. Senators, 49 U.S. Representatives and five Governors.

1 were not produced at the request of Schwarz or his campaign; no one from Schwarz's campaign
2 was involved in the creation, production, or distribution of the advertisements; the information in
3 the advertisements was publicly available; and was not provided to the PAC or its vendors by
4 Schwarz or his campaign. The Schwarz Committee's response to the complaint states that
5 Congressman Schwarz never attended an RMSP-PAC Advisory Board meeting, never held a
6 position or cast any vote allowing him to control PAC expenditures, and had "no say" in the
7 PAC's decision to air advertisements supporting his campaign. (Emphasis in the original).

8 While the responses to the complaint do not completely foreclose the possibility of
9 coordination between the Schwarz campaign and RSMP-PAC⁴, they are sufficiently thorough to
10 rebut the initial basis for the allegation in the complaint, namely that coordination can be inferred
11 from Schwarz's position on the PAC's Advisory Board. The complainant filed a supplement to
12 the complaint, however, providing excerpts from a 2007 book entitled *Freshman Orientation:*
13 *House Style and Home Style*, to further support the coordination allegations. The book's author
14 claims that he interviewed Matt Marsden, campaign manager for Schwarz's 2006 primary
15 election, after Schwarz lost the election, and quotes Marsden as stating during the interview that:

16 Main Street did not deliver as they promised they would. They promised to do
17 television ads to counter Club for Growth's early ads, and I hounded them to get
18 their pro-Schwarz stuff on the air, and they kept telling me, its on its way. Yeah,
19 well, when it arrived, more than a month after they promised, it was too little too
20 late....

21
22 See Attachment to the Supplement to the Complaint (ellipses in the original). In the book's
23 preface, *see id*, the author states that while meeting with Congressman Schwarz or his staff,
24 "I always carried a microcassette recorder equipped with an internal microphone, along with a
25 ready supply of batteries and unused tapes. I recorded my own observations as well as answers

⁴ For example, the affidavits do not foreclose the possibility that a member of Schwarz's staff may have contacted PAC staff and had substantial discussions concerning the substance or timing of the advertisements.

1 to questions I posed to those involved in the events of the moment." Thus, the author may have
2 a recording of his interview with Marsden.⁵

3 The advertisements reported by RSMP-PAC as independent expenditures met the payment
4 and content prongs of the coordinated communications regulations because RMSP-PAC spent
5 \$91,300 on advertisements on behalf of the Schwarz campaign and the advertisements expressly
6 advocated the election of Congressman Schwarz or the defeat of Tim Walberg, his opponent.
7 See 11 C.F.R. §§ 109.21(a) and (c)(3). In addition, an investigation is warranted to determine
8 whether the conduct prong was also satisfied.

9 With respect to the conduct standard for coordination, Marsden's reported use of the term
10 "hounded" and the phrase "they kept telling me" suggest that he had more than one conversation
11 with RMSP-PAC. His reported communications with RSMP-PAC also suggest that he may have
12 conveyed the campaign's "plans, projects, activities and needs" (e.g., put pro-Schwarz television
13 ads on the air to counter Club for Growth's ads) to RMSP-PAC and this information may have
14 been material to the creation (e.g., substance of the ads) and the distribution (e.g., the timing) of
15 RMPS-PAC's ads. See 11 C.F.R. § 109.21(d)(3). Further, Marsden's reported discussions with
16 RMSP-PAC raise questions regarding who initiated the contact between Marsden and RMSP-PAC,
17 when the contact was initiated, and what promises the RMSP-PAC may have made to the Schwarz
18 campaign.

19 The Schwarz Committee did not respond to the supplement to the complaint. The Schwarz
20 Committee would have been in a position to ask its campaign manager Marsden about the
21 conversations reported in the book's excerpts.

⁵ Edward Sidlow, author of *Freshman Orientation: Home Style and House Style*, is a professor of political science at Eastern Michigan University. He also authored *Challenging the Incumbent: An Underdog's Undertaking*, a book on congressional campaigns, and has published numerous articles.

1 RMSP-PAC states in its response to the supplement that the PAC's previous response to
2 the original complaint "covers the issues addressed by the CFG in this amended complaint. The
3 CFG amended complaint does not add anything to this case. As explained in the response
4 previously submitted, none of the members of the PAC Board coordinated PAC expenditures
5 with Congressman Schwarz or his staff." However, RSMP-PAC's original response did not
6 specifically address the issue of alleged conversations that Maraden had with someone at the PAC.
7 In RMSP-PAC's original response, each affiant states either "to the "extent" of their knowledge
8 or the "best" of their knowledge, there was no contact with Congressman Schwarz or his staff
9 with respect to the advertisements. That may have been the case at the time of the affidavits.
10 However, with the filing of the supplemental complaint, there is a new, specific allegation; if
11 the book's excerpts are accurate, Maraden must have spoken to someone at RMSP-PAC about
12 the advertisements, but the PAC's response to the supplemental complaint does not specifically
13 confirm or deny that it sought to determine who that person might be, or if located, what that
14 person said about the timing and substance of any conversations. Thus, there is nothing in the
15 RSMP-PAC and Schwarz Committee responses and affidavits that specifically rebut Mr. Maraden's
16 reported statements, and neither committee specifically denied them after receiving the supplement
17 to the complaint.

18 Accordingly, we recommend that the Commission find reason to believe that
19 Republican Main Street Partnership-PAC and Sarah Resnick, in her official capacity as treasurer,
20 violated 2 U.S.C. §§ 441a(a)(2) and 434(b) by making, and failing to disclose, excessive
21 contributions to the Schwarz Committee in the form of coordinated expenditures; reason to
22 believe that Schwarz for Congress and Robert Schuler, in his official capacity as treasurer,

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1 violated 2 U.S.C. §§ 441a(f) and 434(b) by knowingly accepting and failing to disclose excessive
2 contributions; and authorize the use of compulsory process, as discussed *infra* Section III.

3 The candidate, Joe Schwarz, is named in the complaint as a respondent. As the
4 information available at this time does not indicate that he may have been personally involved in
5 discussions with RMSP-PAC regarding the ads, we recommend that the Commission take no
6 action at this time with respect to Congressman Joe Schwarz.

7 **B. The Schwarz Committee and RMSP-PAC Complied or Substantially**
8 **Complied with the Disclaimer Provisions of the Act**

9
10 **1. Schwarz Campaign Advertisements**

11 The complaint alleges that the Schwarz Committee's television advertisement, attached
12 as Exhibit E to the complaint, failed to include the proper disclaimers because it did not contain a
13 fullscreen view or a "clearly identifiable" image of the candidate. The complaint also alleges
14 that there was no written disclaimer at the end of the communication indicating that the
15 candidate had approved the communication; Congressman Schwarz states at the beginning of the
16 advertisement "I'm Joe Schwarz and I approve this message." In addition, without further
17 specification, the complaint alleges that three other Schwarz advertisements, attached as Exhibit
18 F to the complaint, "appear to be illegal for various reasons."

19 The Commission's regulations provide that a communication transmitted through
20 television must include a statement that identifies the candidate and states that he or she has
21 approved the communication. 11 C.F.R. § 110.11(c)(3)(ii). The candidate shall convey the
22 statement either (a) through an unobscured, fullscreen view of the candidate making the
23 statement, or through a voice-over by the candidate, accompanied by a clearly identifiable
24 photographic or similar image of the candidate. A photographic or similar image of the

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1 candidate shall be considered "clearly identifiable" if it is a least eight (80) percent of the vertical
2 screen height. 11 C.F.R. § 110.11(c)(3)(ii)(A) and (B).

3 It appears that the advertisement in Exhibit E to the complaint and the first advertisement
4 in Exhibit F to the complaint are the same advertisements that were the subject of ADR 355/356.

5 In those matters, addressed together, the Commission dismissed the allegations and closed the
6 files.⁶ To be consistent, the Commission should dismiss the allegations here pertaining to those
7 advertisements. The complaint does not specify how the other two advertisements in Exhibit F
8 to the complaint are deficient, but one appears to contain an image of Schwarz with simultaneous
9 audio stating, "I'm Joe Schwarz and I approve this message," and states it was paid for by
10 Schwarz for Congress. The other contains the verbal disclaimer by Schwarz, several images of
11 him, and states that it was paid for by Schwarz for Congress. It is unknown whether these two
12 advertisements are the ones that ran on television or just as video-clips on the Committee's
13 website. However, as they appear to be in full or substantial compliance with the Act's
14 disclaimer requirements, and without any specific allegations of deficiencies, it would not be a
15 good use of the Commission's resources to further pursue them. *See* ADR 347/MUR 5727
16 (Kaloogian/Roach), MUR 5629 (Newberry) and MUR 5834 (Darcy Burner for Congress) (the
17 Commission used its discretion to dismiss allegations in instances where there was substantial
18 compliance with disclaimer requirements).

19 Accordingly, we recommend that the Commission dismiss the allegations that Schwarz
20 for Congress and Robert Schuler, in his capacity as treasurer, violated 2 U.S.C. § 441d.

⁶ In ADR 355 and ADR 356 (Schwarz for Congress), each advertisement contained text at the beginning and end of the advertisement stating that it was paid for by Schwarz for Congress. The Schwarz Committee contended that the advertisements that the complaint was based on were not the ads that ran on television, but were video-clips advertisements on the Committee's website. The Committee further stated that the advertisements that ran on television contained the proper disclaimers, with the Congressman's photo appearing at the same time as his voice disclaimer.

2. RMSP-PAC's Advertisements

The complaint alleges that RMSP-PAC broadcast a radio advertisement for the benefit of the Schwarz Committee, attached as Exhibit G, that failed to state that RMSP-PAC was responsible for its content, failed to include the name and permanent street address, telephone number or World Wide Web address of the person who paid for the communication, and failed to state that the communication was not authorized by any candidate or candidate's committee. In an affidavit included with its Response, Sarah Resnick, RMSP-PAC's treasurer, avers that the complaint refers to a recorded advertisement that she placed on the PAC's website, but that was never broadcast on any radio station. According to Ms. Resnick, "the website included a written disclaimer explaining that the PAC paid for the ad," and the PAC's contact information was available on its website. Resnick affidavit at 2.

In its Response, RMSP-PAC also states that the specific disclaimers required for radio advertisements do not apply to the advertisement in question since it was not broadcast on the radio, but only appeared on its website. According to RMSP-PAC, the advertisement therefore only had to meet the general disclaimer requirements set forth at 11 C.F.R. § 110.11(b)(3), which apply to Internet websites of political committees available to the general public.

In MUR 5526 (Graf for Congress), the Commission stated that a communication on the candidate's website did not have to meet the specific disclaimer requirements of a printed communication, such as placing the disclaimer within a printed box. See Statement of Reasons in MUR 5526. According to the Commission, while the Act establishes additional disclaimer requirements on a medium-by-medium basis for printed, radio and television communications, not "every medium contemplated in Section 441d" fits into one of these categories. *Id.* The communication in issue here is a recorded communication that never ran on the radio, but was

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1 available only on the PAC's website. Consistent with the approach in MUR 5526, such a
2 communication is not specifically covered by the additional disclaimer requirements. Thus, the
3 disclaimer would only need to meet the general disclaimer requirements for Internet websites of
4 political committees available to the general public, which include a statement that it was not
5 authorized by any candidate or candidate's committee. See 11 C.F. R. § 110.11(b)(3). RSMP-
6 PAC's response did not address this requirement.

7 We have listened to the advertisement in question, and it states that RMSP-PAC paid for
8 the communication, and that it is "not authorized by any candidate committee," instead of "not
9 authorized by any candidate or candidate's committee." With respect to the general disclaimer
10 requirement that the disclaimer must clearly state the full name and permanent street address,
11 telephone number and or World Wide Web address of the person who paid for the
12 communication, this information is not stated in the advertisement, but is found elsewhere on the
13 PAC's website. Although RMSP-PAC did not fully comply with the general disclaimer
14 requirements, it appears there is enough information for a visitor to the website to determine who
15 paid for and authorized the advertisement, and how to contact the sponsor. See ADR 347/MUR
16 5727 (Kaloogian/Roach) (statement of reasons pending), MUR 5629 (Newberry) and MUR 5834
17 (Darcy Burner for Congress) (Commission dismissed allegations where Respondents partially
18 complied with the Act's "stand by your ad" disclaimer requirements in television
19 advertisements). Under these circumstances, it appears that dismissal would be the appropriate
20 disposition. Therefore, we recommend that the Commission dismiss the allegations that
21 Republican Main Street Partnership-PAC and Sarah Resnick, in her official capacity as treasurer,
22 violated 2 U.S.C. § 441d in connection with the recorded advertisement that was placed on its
23 website.

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1 The complaint also alleges that a US Newswire release, attached as Exhibit G to the
2 complaint, did not include the required disclaimers. In its Response, RMSP-PAC states that it
3 did not distribute this article. In her affidavit, treasurer Sarah Resnick avers that the release
4 "appears to have been pulled from the PAC's website by a reporter and distributed as a news
5 article," and that "[n]o one from the PAC was involved in distributing this article through U.S.
6 Newswire." Resnick affidavit at p.3. We have no information to the contrary. Because the
7 article appears on the website of the U.S. Newswire, it likely that U.S. Newswire took the
8 information from the RMSP-PAC website. However, Ms. Resnick also avers that "[w]hen the
9 information was on the PAC's website, it included proper disclaimers." *Id.* Ms. Resnick appears
10 to be alluding to a website press release dated August 4, 2006, which has much of the identical
11 language as the US Newswire article. While the other required information appears elsewhere
12 on the website, the press release does not contain an authorization statement. *See* Attachment 1.
13 However, since the focus of the complaint is on the U.S. Newswire article, not the PAC's
14 website release, and the costs of the website release were likely *de minimis*, we recommend that
15 the Commission dismiss the allegations in the complaint relating to this press release.

16 Finally, the complaint alleges that RMSP-PAC broadcast a television advertisement for
17 the benefit of the Schwarz Committee, attached as Exhibit C to the complaint, that fails to
18 include a written statement that RMSP-PAC is responsible for the contents of the advertising at
19 the end of the advertisement; there is an audio statement to this effect at the beginning of the
20 advertisement. In its Response, RMSP-PAC states that the television advertisement contained all
21 the required disclaimers because the statute does not require a written disclaimer to appear at the
22 end of the communication. RMSP-PAC is correct that the Act does not require a written
23 disclaimer at the end of television advertisements, but the Commission's regulations do. The Act

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1 provides that a communication paid by other persons that is transmitted through television
2 should include, in a clearly spoken manner, an audio statement identifying who is responsible for
3 the content of the communication. 2 U.S.C. § 441d(d)(2). The Commission's regulations
4 provide that a communication transmitted through television must also include such a statement
5 in clearly readable writing at the end of the communication. See 11 C.F.R. 110.11(c)(4)(iii).
6 Nevertheless, the advertisement states audibly at the beginning that RMSP-PAC "is responsible
7 for the contents of this advertisement," so viewers would be apprised of this information. See
8 ADR 347/MUR 5727 (Kaloogian/Roach), MUR 5629 (Newberry) and MUR 5834 (Darcy
9 Burner for Congress). Accordingly, we recommend that the Commission dismiss in an exercise
10 of its prosecutorial discretion the allegation that Republican Main Street Partnership PAC, and
11 Sarah Resnick, in her official capacity, violated 2 U.S.C. § 441d with respect to this
12 advertisement.

13 **C. RMSP-PAC and the Schwarz Committee Do Not Appear to have Violated**
14 **the Provision of the Act relating to the Bundling or Earmarking of**
15 **Contributions.**
16

17 The complaint alleges that RMSP-PAC and the Schwarz Committee failed to file conduit
18 reports of contributions to the Schwarz campaign bundled through the PAC. As support, the
19 complaint attaches as Exhibit H an article from the *The Hill* newspaper reprinted on the RMSP-
20 PAC website stating that the PAC raised \$100,000 for various candidates, including Joe
21 Schwarz. The complaint also attaches as Exhibit I other pages from the PAC's website to show
22 that RMSP-PAC solicited donations for the Schwarz campaign; the pages include a statement
23 that the PAC "support[s] our endorsed candidates by collecting contributions from individuals
24 like you...and passing them along directly to candidates" (ellipses in original), and part of the

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1 PAC's endorsement of Joe Schwarz. The complaint further alleges that if the solicitations were
2 independent expenditures, RMSP-PAC has not reported any costs for them.

3 The Act requires that all contributions made by a person, either directly or indirectly, on
4 behalf of a particular candidate, including contributions that are in any way earmarked or
5 otherwise directed through an intermediary or conduit to such candidate, be treated as
6 contributions from such person to such candidate, and the conduit or intermediary must report
7 such earmarked contributions. *See* 2 U.S.C. § 441a(a)(8); *see also* 11 C.F.R. § 110.6(c)(2)
8 (recipient committee must report each conduit or intermediary who forwards earmarked
9 contributions that aggregate more than \$200 in any calendar year).

10 In its Response, RMSP-PAC states that it did not act as a conduit for any contributions to
11 the Schwarz campaign and thus was not required to file any reports of such contributions. In her
12 affidavit, Ms. Resnick states that the PAC held a fundraising event for Schwarz and several other
13 Members of Congress, but avers "[t]o the best of my knowledge," all the money raised was given
14 directly to the candidates or their campaign agents by the contributors," and "PAC members
15 were instructed not to touch the checks." Resnick Aff. at 4. In addition, Ms. Resnick states that
16 RMSP-PAC's website has no mechanism for individuals to contribute directly to candidates or to
17 earmark contributions to particular candidates, and the PAC has never received any candidate
18 contributions through the Internet. *Id.* Similarly, the Schwarz Committee responded that it did
19 not authorize RMSP-PAC to serve as a conduit, it never received a conduit report from RMSP-
20 PAC, no bundling of contributions occurred, and all contributions were delivered directly to staff
21 or agents of the Schwarz Committee.

22 RMSP's website contains endorsements of nine 2006 candidates. At the end of each
23 endorsement, the following appears: "To make a contribution to support [candidate's name's]

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1 election bid, CLICK HERE." Clicking in the designated place brings up a page that only permits
2 contributions to RSMP-PAC. Although the wording accompanying this mechanism and the
3 website language quoted in the complaint might lead a reader to believe that the PAC bundles
4 contributions, Ms. Resnick's affidavit and the Schwarz Committee's response state that RSMP-
5 PAC never bundled any contributions to Congressman Schwarz and we have no information to
6 the contrary. Therefore, we recommend that the Commission find no reason to believe that
7 Republican Main Street Partnership PAC and Sarah Resnick, in her official capacity as treasurer,
8 or Schwarz for Congress and Robert Schuler, in his official capacity as treasurer, violated
9 2 U.S.C. § 441a(a)(8) by failing to report earmarked contributions.

10 With regard to RMSP-PAC's alleged failure to report the costs associated with the
11 candidate endorsements on its website as independent expenditures, we have no information that
12 those costs might be above \$200.⁷ Therefore, this Office recommends that the Commission find
13 no reason to believe that RMSP-PAC and Sarah Resnick, in her capacity as treasurer, violated
14 2 U.S.C. § 434(b)(4)(H)(iii).

15 D. RSMP did not make contributions to the Schwarz Committee or make
16 expenditures on behalf of the Schwarz Committee.
17

18 The complaint alleges that the Schwarz Committee's disclosure of an \$865 in-kind
19 contribution from RMSP, a corporation, see Exhibit D attached to the complaint, and a Gannett

⁷ In Advisory Opinion 1999-37 (X-PAC), the Commission gave guidance regarding a situation where there are costs in connection with independent expenditures for advertising that appear on a political committee's own website. According to the Commission, such costs would need to be reported and itemized if such expenses exceed \$200. See 2 U.S.C. § 434(b)(6)(B)(iii). In MUR 5491 (Jerry Falwell Ministries, Inc.), which involved corporate expenditures for Internet communications, the Commission dismissed the matter where the funds expended for Internet-based communications were likely *de minimis*. See Statement of Reasons in MUR 5491. See also *E&J for Internet Communications* at 18594 ("the cost of placing a particular piece of political commentary on the Web is generally insignificant. The cost of such activity is often only the time and energy that is devoted by an individual to share his or her views and opinions with the rest of the Internet community.").

1 News Service article quoting RMSP's executive director, Sarah Resnick, as stating that RSMP
2 spent \$470,000 on broadcast advertisements and mailings supporting Joe Schwarz, indicate that
3 "RSMP illegally spent \$470,000 of corporate funds in an attempt to elect Schwarz."

4 In its Response, the Schwarz Committee states that its July 2006 Monthly Report should
5 have reported the \$865 in-kind contribution as coming from RMSP-PAC, not RMSP. RMSP's
6 response includes an affidavit from its 2006 treasurer, Douglas Ose, stating that RMSP, a
7 501(c)(4) entity, did not make an \$865 in-kind contribution to the Schwarz campaign, any
8 independent expenditures for candidates in 2006, including Schwarz, and that the Gannett News
9 Service article incorrectly attributed any expenditures to RMSP. Finally, in its Response, the
10 RMSP-PAC states that it reported the \$865 in-kind contribution to the Schwarz Committee in its
11 July 2006 Monthly Report. In her attached affidavit, treasurer Resnick avers: "I was misquoted
12 in the Gannett News Service article. . . I did not say that Republican Main Street Partnership
13 spent \$470,000 for Schwarz. I said the PAC spent \$91,000 in independent expenditures in
14 Mr. Schwarz's race, as detailed in our FEC reports." Resnick Aff. at 4.

15 Since RMSP-PAC confirms that it made the \$865 in-kind contribution to the Schwarz
16 Committee, which was disclosed in the Committee's July 2006 Monthly Report, Resnick avers
17 she was misquoted in the Gannett News Service article, and we have no other information
18 indicating that RMSP made any expenditures on behalf of the Schwarz campaign, we
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1 recommend that the Commission find no reason to believe that Republican Main Street
2 Partnership violated 2 U.S.C. § 441b.⁸

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⁸ In their responses, both RMSP and RMSP-PAC state that they are not connected to each other. The complaint states that the two entities, despite their similar names, purport to be completely independent. However, in the course of stating that alleged RMSP expenditures on behalf of the Schwarz Committee would not be independent because Schwarz is an "elected member" of the RMSP, the complaint states that the two entities share at least 7 board members and at least one officer. There is, in fact, no apparent overlap on the Boards since RMSP's Board has no current elected officials. See www.republicanmainstreet.org/board.htm. While the PAC's Board is not listed on its website, based on the affidavits in this matter, it appears that its Board is composed of current elected officials. Sarah Resnick, however, does serve as both Executive Director of RMSP and as treasurer of RMSP-PAC. While alleging that there may be other "affiliates" of the two entities known to Resnick that spent money to elect Schwarz, the complaint stops short of alleging that RMSP and RMSP-PAC are themselves affiliated, or that the PAC is a separate segregated fund of the corporation. Accordingly, we do not further discuss these issues in this Report.

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1 **V. RECOMMENDATIONS**

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1. Find reason to believe that Republican Main Street Partnership-PAC and Sarah Resnick, in her official capacity as treasurer, violated 2 U.S.C. §§ 441a(a)(2) and 434(b).
2. Find reason to believe that Schwarz for Congress and Robert Schuler, in his official capacity as treasurer, violated 2 U.S.C. §§ 441a(f) and 434(b).
3. Dismiss the allegations that Schwarz for Congress and Robert Schuler, in his official capacity as treasurer, violated 2 U.S.C. § 441d.
4. Dismiss the allegations that Republican Main Street Partnership-PAC and Sarah Resnick, in her official capacity, violated 2 U.S.C. § 441d.
5. Find no reason to believe that that Republican Main Street Partnership-PAC and Sarah Resnick, in her official capacity as treasurer, violated 2 U.S.C. § 441a(a)(8).
6. Find no reason to believe that Schwarz for Congress and Robert Schuler, in his official capacity as treasurer, violated 2 U.S.C. § 441a(a)(8).
7. Find no reason to believe that Republican Main Street Partnership-PAC and Sarah Resnick, in her official capacity as treasurer, violated 2 U.S.C. § 434(b)(4)(H)(iii).
8. Find no reason to believe that Republican Main Street Partnership violated 2 U.S.C. § 441b.
9. Take no action at this time with respect to Congressman Joe Schwarz.
10. Approve the attached Factual and Legal Analyses.

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11.

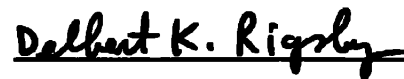
12. Approve the appropriate letters.

10/29/2007
Date


Thomasenia P. Duncan
General Counsel


Ann Marie Terzaken
Acting Associate General Counsel for
Enforcement


Susan L. Lebeaux
Assistant General Counsel


Delbert K. Rigsby
Attorney

Attachments:

1. RMSP-PAC Press release dated August 4, 2006

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Republican

Partnership

Aug. 2, 2007

REPUBLICAN MAIN STREET PARTNERSHIP

*Political
Action
Committee*



REPUBLICAN MAIN STREET PAC NEWS

PRESS RELEASE

August 4, 2006

Republican Main Street Partnership PAC Urges Voters to Say No to Tim Walberg

Walberg's Dismal Legislative Record,
Radical Agenda, Deceptive Campaign Tactics
Make Him the Wrong Choice for MI-7

(Washington, DC) – With just days left before the August 8th Michigan Republican primary, the Republican Main Street Partnership PAC is urging voters to say no to Tim Walberg. "Tim Walberg's dismal legislative record, radical agenda, and deceptive campaign tactics make him the wrong choice for Republicans in Michigan's 7th," said Sarah Chamberlain Resnick, head of the RMSP PAC. "Walberg's campaign is working hard to hide his own legislative record and radical agenda, while misleading voters about Congressman Joe Schwarz's record of accomplishment. On Tuesday, voters will have the chance to go to the polls and reject Tim Walberg and his deceptive and divisive campaign tactics."

The Republican Main Street Partnership PAC is mounting an aggressive television, radio and ground campaign to educate voters about Walberg's record, his agenda, and the people pulling the strings behind his ill-conceived candidacy.

Tim Walberg's campaign against incumbent Republican Congressman Joe Schwarz is relying heavily on out-of-state contributions from the Club for Growth. "Walberg's campaign tactics of deception and division aren't surprising, they are the hallmarks of a Club for Growth-backed campaign," continued Resnick.

"The Club for Growth claims it supports pro-growth, limited government candidates, but once again their rhetoric doesn't match up with the reality on the ground," said Resnick. "The Walberg campaign isn't about fiscal ideology, it's a campaign based on deceiving voters about Congressman Schwarz's record while trying to divide the electorate over hot button social issues."

The Club for Growth is pouring hundreds of thousands of dollars /

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into Walberg's challenge to Congressman Schwarz, forcing Republicans to divert limited financial resources away from protecting the Republican majority. "Once again the Club for Growth is a willing participant in Nancy Pelosi's effort to undermine the Republican majority in the House. The Club for Growth ought to be joining Main Street and Republican organizations across the country in working to defend our legislative majorities," continued Resnick. "Unfortunately, the Club doesn't care about protecting our majorities; instead they are obsessed with collecting political scalps."

"Main Street will continue to work tirelessly to protect and expand Republican majorities in both the House and Senate. We are confident that on Tuesday the voters in Michigan will reject Tim Walberg and the Club for Growth," concluded Resnick.

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The Republican Main Street Partnership PAC is a registered political action committee that supports Republican candidates who are fiscally conservative and take a pragmatic, common-sense approach to social issues. For more information on the PAC and our candidates, visit www.mainstreetpac.com.

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ATTACHMENT 1
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