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**BEFORE THE
FEDERAL ELECTION COMMISSION**

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2010 APR -7 AM 11:13

OFFICE OF GENERAL
COUNSEL

Sam Lieberman
Chair, Nevada State Democratic Party
1210 S. Valley View Boulevard Suite 114
Las Vegas, NV 89102,

Complainant,

v.

Danny Tarkanian
840 S. Rancho Drive
Suite 4-614
Las Vegas, NV 89106,

MUR# 6269

Tarkanian for Senate
840 S. Rancho Drive
Suite 4-614
Las Vegas, NV 89106,

Mike Montandon for Governor
3575 West Cheyenne Avenue
Suite 109
North Las Vegas, Nevada 89032, and

Steve Wark

Las Vegas, NV 89129,

Respondents.

COMPLAINT

Complainant files this complaint against Danny Tarkanian; Tarkanian for Senate; Mike Montandon for Governor; and Steve Wark, for violations of the Federal Election Campaign Act ("the Act") and Federal Election Commission regulations, as described below.

I. BACKGROUND FACTS

A. Respondents

Mike Montandon for Governor is the campaign committee of Mike Montandon, a gubernatorial candidate in the state of Nevada. This campaign has not registered or filed reports with the Commission.

Danny Tarkanian is a candidate for the United States Senate from the state of Nevada. He filed a Statement of Candidacy with the Commission on August 17, 2009. His principal campaign Committee is Tarkanian for Senate.

Steve Wark is a political consultant, and the president of Image & Design. He serves as a consultant to the Montandon campaign.¹ During calendar year 2009, he has received \$17,500 personally from the campaign for consulting services; his company, Image & Design, received another \$10,000. This is at least his third time working for Montandon.²

Wark is also an advisor to the Tarkanian campaign.³ During the last quarter of 2009, he received \$15,000 for "consulting grassroots" from Tarkanian for Senate.

B. The Advertisement

On or about March 18, 2010, Mike Montandon for Governor ran an Internet advertisement (Attachment A). That advertisement

¹ See <http://www.lvrj.com/news/governor-candidates-gearing-up-78669502.html>.

² See <http://www.lvrj.com/news/53930687.html>.

³ See <http://nevadanewsandviews.com/2009/10/13/tark-boasts-of-quarter-mil-raised-from-6kdonors/>.

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included a picture of Senator Harry Reid, a candidate for the United States Senate from the state of Nevada. The text of the ad stated: "Put an end to the Reid dynasty."

II. LEGAL ARGUMENT

A. Mike Montandon for Governor has used soft money to oppose a federal candidate

Federal law prohibits a "candidate for State or local office" to spend funds for a public communication that "refers to a clearly identified candidate for Federal office" and that "attacks or opposes" that candidate, unless he uses funds "subject to the limitations, prohibitions, and reporting requirements" of the Act.⁴

The Internet advertisement was a public communication;⁵ it referred to Senator Reid and clearly opposed his re-election. Because the Montandon campaign has not filed any reports with the Commission, it cannot have used funds subject to the reporting requirements of federal campaign finance law. It is thus impossible to tell whether the Montandon campaign also used funds that were not subject to the limitations or prohibitions of the Act; however, Nevada state law permits corporate and labor unions to make contributions to candidates, and permits contributions from persons to candidates in the amount of \$5,000 per election,⁶ well above that permitted under federal law.

⁴ 2 U.S.C. §§ 431(20)(A)(iii), 441i(f)(1).

⁵ See 11 C.F.R. § 100.26.

⁶ See Nev. Rev. Stat. § 294A.100.

Mike Montandon for Governor has violated the Act's restriction on the use of state campaign funds on public communications attacking federal candidates.

B. Mike Montandon for Governor has made, and Danny Tarkanian has received, an illegal in-kind contribution

The Commission has promulgated a precise definition of when a communication is "coordinated" and results in an in-kind contribution from the payor of the communication to a candidate. The test has two parts: conduct and content.

The content test is satisfied when a public communication refers to a clearly identified Senate candidate, and is run in that candidate's jurisdiction 90 days or fewer before the candidate's primary or general election.⁷ This advertisement unquestionably satisfies the content test; the advertisement contains a picture of Senator Reid, and ran in Nevada fewer than 90 days before the primary election.

The conduct test is satisfied when a vendor who has provided "consulting or . . . political or media advice" to an opponent of the candidate in the ad⁸ is also working for the payor of a communication, and "uses or conveys" to the payor material "information about the campaign plans, projects, activities, or needs" of the opponent.⁹ Steve Wark very likely meets this standard. He works for both Tarkanian and for the

⁷ See 11 C.F.R. § 109.21(c) (4).

⁸ Id. § 109.21(4) (ii) (I).

⁹ Id. § 109.21(d) (4) (iii) (A).

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Montandon campaign; it is likely that even if he did not help create this ad personally, he has conveyed material "plans, projects, activities, or needs" of Tarkanian to the Montandon campaign.

As a result, the Montandon campaign has made an in-kind contribution of the value of this advertisement to Danny Tarkanian and his campaign.¹⁰ If the value is over \$2,400, then the in-kind contribution would be in excess of federal contribution limits;¹¹ if the funds used by the Montandon campaign were from a corporation, then the contribution would also be in violation of federal source restrictions.¹²

C. Mike Montandon for Governor has failed to file required reports with the Commission if the advertisement were not coordinated

If the advertisement were not illegally coordinated with a candidate or political party, it would be an independent expenditure, defined as an expenditure "expressly advocating the election or defeat of a clearly identified candidate."¹³ The phrase "Put an end to the Reid dynasty" has "no other reasonable meaning than to urge the . . . defeat of" Senator Reid.¹⁴ On information and belief, this advertising campaign cost well in excess of \$250; therefore, the Montandon campaign would be

¹⁰ See *id.* § 109.21(b)(1).

¹¹ See 2 U.S.C. § 441a(a)(1)(A).

¹² See *id.* § 441b.

¹³ *Id.* § 431(17).

¹⁴ 11 C.F.R. § 100.22(a).

required to file independent expenditure reports with the Commission if it were conducted independently of the Tarkanian campaign.¹⁵

III. REQUESTED ACTION

As we have shown, Respondents has violated the Federal Election Campaign Act. Accordingly, we request that the Commission investigate this matter, and that Respondents be enjoined from further violations and fined the maximum amount permitted by law.

Sincerely,

Sam Heberman

SUBSCRIBED AND SWORN to before me this 30th day of March, 2010.

Beverly W. Moore
Notary Public

My Commission Expires:

Jan. 25, 2011



¹⁵ See *id.* § 109.10(b).

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ATTACHMENT A



Advertisement

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