



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

JUN 9<sup>1</sup> 2010

Brian K. Plum  
Republican Party of Virginia, Inc.  
115 East Grace Street  
Richmond, Virginia 23219

Re: MUR 6300

Dear Mr. Plum:

On April 23, 2009, the Republican Party of Virginia, Inc. ("RPV") notified the Federal Election Commission ("Commission") of the possibility that RPV may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act").

After reviewing the information contained in RPV's submission and its supplements, the Commission, on May 25, 2010, found reason to believe that the Republican Party of Virginia, Inc. and Brian K. Plum, in his official capacity as treasurer, violated 2 U.S.C. §§ 432(b), 434(b), and 441b(a). Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

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If RPV intends to be represented by counsel in this matter, please advise the Commission by completing the enclosed Designation of Counsel form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

On behalf of the Commission,



Matthew S. Petersen  
Chairman

Enclosures:  
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Republican Party of Virginia, Inc. and MUR: 6300  
Brian K. Plum Richard F. Neel, Jr.,  
in his official capacity as treasurer

**I. INTRODUCTION**

This matter originated with a submission filed by the Republican Party of Virginia, Inc. and Brian K. Plum, in his official capacity as treasurer ("RPV"), disclosing possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act") and the Commission's regulations.<sup>1</sup>

**II. FACTUAL BACKGROUND**

According to RPV, the violations of the Act and the Commission's regulations at issue in this matter relate to the untimely transmittal and inaccurate disclosure of online contributions as well as the making and acceptance of a prohibited in-kind contribution. RPV states that these violations arose out of work performed for the party committee by one of its vendors, Gen-X Strategies, Inc. ("Gen-X"). Gen-X, which also does business as GXS Strategies, is registered as a corporation with the Virginia State Corporation Commission. Gen-X provides online, technology and communication services to political committees and organizations, corporations and federal agencies. Jeffrey M. Frederick, who served as RPV's chairman during the relevant time period, is also the Chief Executive Officer ("CEO") of Gen-X.

RPV states that after Mr. Frederick's election as RPV's chairman on May 31, 2008, he unilaterally stopped RPV's use of PayPal as its "gateway" for processing contributions made on

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<sup>1</sup> Richard F. Neel, Jr. was the treasurer for RPV during the relevant time period.

1 its website and transferred this responsibility to a division of Gen-X called  
2 ChargedContributions.com. Pursuant to RPV's arrangement with PayPal, online contributions  
3 were processed, deposited directly into RPV's bank account within 24 hours, and an e-mail  
4 report was generated notifying the party committee of all contributions processed in that time  
5 period. Unlike the arrangement with PayPal, Gen-X did not deposit RPV's online contributions  
6 directly into RPV's bank account, but instead transferred the funds into a merchant account  
7 maintained by ChargedContributions.com before disbursing the funds to RPV in the form of two  
8 checks drawn from ChargedContributions.com's bank account. Although Gen-X eventually  
9 began sending automatically generated e-mails listing RPV's online contributions to RPV's  
10 office manager, she was unable to match the contribution reports to the party committee's online  
11 bank records because Gen-X did not directly deposit the online contributions.

12 The first check issued by ChargedContributions.com, dated July 8, 2008, was in the  
13 amount of \$1,269.45 (representing 18 online contributions totaling \$1,365, less \$95.55 in fees).  
14 RPV's office manager deposited this check on the date of receipt, July 10, 2008. Based on the  
15 Gen-X-generated spreadsheet that accompanied the check, it appears the company received these  
16 18 online contributions between June 23, 2008 and June 29, 2008. On October 8, 2008, RPV  
17 received the second check issued by ChargedContributions.com, dated October 1, 2008, in the  
18 amount of \$18,386.10 (representing 40 online contributions totaling \$19,770 less \$1,383.90 in  
19 fees). RPV also deposited this check on the date of receipt. Gen-X's spreadsheet appears to  
20 indicate that it received these 40 online contributions between July 8, 2008 and September 22,  
21 2008. In sum, from June through September 2008, Gen-X processed 58 online contributions  
22 totaling \$21,135. Because Gen-X forwarded these online contributions to RVP on only two  
23 occasions during that period, RVP received 33 out of the 58 contributions between 11 and 92

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1 days after the contributions were actually made by contributors. Due in part to Gen-X's delay in  
2 forwarding the 58 online contributions, RPV also filed inaccurate disclosure reports with the  
3 Commission from July through October 2008. Specifically, RPV disclosed these online  
4 contributions on either its 2008 August Report or its 2008 Pre-General Report, reporting as the  
5 dates of receipt for those contributions the dates on which it deposited the two checks, rather  
6 than the dates the contributions were made by the contributors.

7 RPV also received a prohibited in-kind corporate and government contractor contribution  
8 from Gen-X valued at \$17,717. In September 2008, Mr. Frederick, as the chairman of RPV,  
9 evidently instructed the party committee's staff to report a \$17,717 in-kind contribution from  
10 Gen-X on its state election reports. This in-kind contribution was described in RPV's state  
11 disclosure report as "website email and online contribute setup - actual cost." October 15, 2008  
12 Report, Schedule B. Although RPV states that it is unable to confirm the precise services Gen-X  
13 performed or the exact value of this in-kind contribution, the available documents indicate that  
14 Gen-X provided services that included "activist web set up," "charged contribution set up," and a  
15 website e-mail service relating to the issuance of broadcast e-mail messages. Some of these  
16 broadcast e-mail messages mentioned federal candidacies and elections. On April 4, 2009, the  
17 State Central Committee of RPV removed Mr. Frederick as chairman, and RPV, in what it  
18 characterized as an abundance of caution, transferred \$17,717 from its federal account to its non-  
19 federal account to reimburse the in-kind contribution. RPV reported Gen-X's in-kind  
20 contribution as a federal contribution in an attachment to RPV's 2009 May Monthly Report filed  
21 with the Commission.

22 Mr. Frederick has stated that Gen-X provided \$17,717 in services to RPV related to an  
23 interim online platform for RPV's "website and other online technologies." Although Mr.

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1 Frederick has not described these services in any detail or indicated whether the expenses related  
2 in any way to the processing of the online contributions, he did reference the "hours that my  
3 [GXS] staff and I spent implementing" the RPV project. While Mr. Frederick asserts that  
4 Gen-X's in-kind contribution was not intended as a federal contribution, he appears to  
5 acknowledge there was a federal component to Gen-X's work. Mr. Frederick states that he  
6 understood that the in-kind contribution would be reported "as a state contribution" and that the  
7 party committee's federal account would need to reimburse the state account with federal dollars  
8 "for the required split amount of the contribution/expense that could be construed as applying to  
9 the Party's activities in federal campaigns."

10 As described below, since making its submission, RPV has continued to work with us to  
11 ensure we have a complete record of the circumstances and violations in this matter. In addition,  
12 RPV has taken steps to address a number of financial issues, including adopting stronger  
13 financial controls recommended by its independent auditor and refunding the subject 58 on-line  
14 contributions.

## 15 **II. FACTUAL AND LEGAL ANALYSIS**

### 16 **A. Transmittal and Reporting Violations**

17 The Act requires every person who receives a contribution in excess of \$50 for an  
18 unauthorized political committee to forward the contribution to the committee no later than 10  
19 days after receiving the contribution. If the amount of the contribution is \$50 or less, that person  
20 must forward such contribution to the committee no later than 30 days after receipt. 2 U.S.C.  
21 § 432(b)(2)(A) and (B); 11 C.F.R. § 102.8(b)(1) and (2). The Act also requires political  
22 committees to deposit all receipts into a designated banking depository within ten days of the  
23 treasurer's receipt of the contributions. See 2 U.S.C. § 432(h)(1); 11 C.F.R. § 103.3(a).

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1           The Act and Commission regulations anticipate that political committees will use agents  
2 to accept contributions and make expenditures on their behalf. 2 U.S.C. § 432(a) and 11 C.F.R.  
3 § 102.9(b). A contributor relinquishes control over the contribution, *i.e.* makes the contribution,  
4 when it is delivered by the contributor to the political committee or to an agent of that political  
5 committee. 11 C.F.R. § 110.1(b)(6).

6           Political committees are required to report the total amount of receipts received during  
7 the reporting period, including contributions from individuals. 2 U.S.C. § 434(b); 11 C.F.R.  
8 § 104.3(a)(2)(i)(A). Such committees are also required to itemize contributions aggregating in  
9 excess of \$200 per election cycle and identify contributors by including his or her name, address,  
10 occupation, the name of his or her employer, if any, and the date of receipt and amount of the  
11 contribution. 2 U.S.C. § 434(b)(3); 11 C.F.R. § 104.3(a)(4)(i). The date of receipt for a  
12 contribution is the date on which the person receiving the contribution on behalf of a political  
13 committee obtains possession of that contribution. 11 C.F.R. § 102.8(b)(2). The date of receipt  
14 is the recording and reporting date for contributions. *Id.*; 11 C.F.R. § 104.8(a) and (b).

15           RPV is responsible for the untimely transmittal of the online contributions at issue in the  
16 matter. 2 U.S.C. § 432(b)(2)(A) and (B). From June – September 2008, contributors making  
17 contributions on RPV's website relinquished control of those contributions to Gen-X, RPV's  
18 agent for purposes of accepting and processing online contributions. 11 C.F.R. § 110.1(b)(6).  
19 Gen-X, as RPV's agent, was obligated to forward contributions of \$50 or less to RPV within 30  
20 days of receiving those contributions and to forward contributions exceeding \$50 to RPV within  
21 10 days of its receiving those contributions. 2 U.S.C. § 432(b)(2)(A) and (B); 11 C.F.R.  
22 § 102.8(b)(1) and (2). However, Gen-X forwarded 33 (totaling \$18,960) out of the 58 online  
23 contributions it accepted and processed for RPV between 11 and 92 days after they were made

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1 by the contributors online, which is beyond the aforementioned 30/10 day deadlines. For its  
2 part, RPV failed to ensure that its agent Gen-X complied with 2 U.S.C. § 432(b)(2) and  
3 11 C.F.R. § 102.8(b) and forwarded those contributions to the party committee within the  
4 required 30/10 day deadlines. *See* MUR 6121 (AdvaMed)(separate segregated fund responsible  
5 for commercial vendor's collection of online contributions, which were periodically forwarded  
6 in a single check, resulting in the untimely transfer of those contributions); *and see* MUR 5229  
7 (SEIU)(separate segregated funds as well as collecting agents liable for failing to adhere to  
8 applicable transmittal requirements). Accordingly, the Commission finds reason to believe that  
9 the Republican Party of Virginia, Inc. and Brian K. Plum, in his official capacity as treasurer,  
10 violated 2 U.S.C. § 432(b) with regard to the untimely transmittal of 33 online contributions.

11 The evidence indicates that RPV violated 2 U.S.C. § 434(b) in connection with its receipt  
12 of the online contributions at issue. RPV reported receiving all 58 of these online contributions  
13 (totaling \$21,135) on the dates (July 10, 2008 and October 8, 2008) it deposited the two checks it  
14 received from Gen-X instead of the dates the contributors actually made their online  
15 contributions. As a result, RPV filed inaccurate reports with Commission. Specifically, RPV  
16 reported online contributions received between June 23, 2008 and June 29, 2008 on its 2008  
17 August Monthly report instead of its 2008 July Monthly report and reported online contributions  
18 received between July 8, 2008 and September 22, 2008 in its Pre-General report instead of its  
19 2008 August, September and October Monthly reports. Accordingly, the Commission finds  
20 reason to believe that the Republican Party of Virginia, Inc. and Brian K. Plum, in his official  
21 capacity as treasurer, violated 2 U.S.C. § 434(b) by failing to accurately report \$21,135 in online  
22 contributions.

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**B. Prohibited Contributions**

The Act prohibits corporations from making contributions or expenditures from their general treasury funds. 2 U.S.C. § 441b(a). Similarly, political committees are prohibited from accepting contributions from this prohibited source. *Id.* Gen-X is an active corporation in Virginia. 2 U.S.C. § 441b. RPV disclosed the transfer of \$17,717 from its federal account to its nonfederal account representing an in-kind contribution ("for certain services including website e-mail and online contributions setup") from Gen-X in an attachment to its 2009 May Monthly report. Although there is some dispute concerning the nature, extent, and exact value of the services provided and whether RPV could have allocated the Gen-X costs between federal and non-federal accounts, RPV and Gen-X acknowledge that Gen-X made, and RPV accepted, an in-kind contribution. In light of the facts that (1) RPV appears willing to concede that Gen-X provided services to the party committee; and (2) that the contribution was related to federal activity (*i.e.* Gen-X processed online federal contributions and provided services such as a broadcast e-mail message service that, in part, discussed federal candidates and elections, Gen-X acknowledges that there was a federal component to its services, and RPV reported the transaction in an FEC disclosure report), it appears that RPV accepted a prohibited contribution when it failed to timely reimburse its nonfederal account for the in-kind contribution from its federal account. *See* AO 1992-33 (DNC/RNC)(to ensure the prohibited "donor" does not "pay for" the federal portion of allocable administrative and fundraising expenses, the party committee must transfer the amount from its federal account to its nonfederal no later than 60 days after the receipt of the in-kind contribution).

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- 1           Accordingly, the Commission finds reason to believe that the Republican Party of**
- 2   Virginia, Inc. and Brian K. Plum, in his official capacity as treasurer, violated 2 U.S.C.**
- 3   § 441b(a).**

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