



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA FIRST CLASS MAIL & FACSIMILE

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July 15, 2011

RE: MUR 6377
Friends of Sharron Angle and Alan Mills,
in his official capacity as treasurer
Sharron E. Angle

Dear Ms. Mitchell:

On September 23, 2010, the Federal Election Commission notified your clients, Friends of Sharron Angle and Alan Mills, in his official capacity as treasurer ("the Committee"), and Sharron E. Angle, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On June 14, 2011, the Commission found, on the basis of the information in the complaint, and information provided by your clients, that there is no reason to believe Friends of Sharron Angle and Alan Mills, in his official capacity as treasurer, and Sharron E. Angle violated 2 U.S.C. § 441a(f). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Christine C. Gallagher, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

Susan L. Lebeaux
Acting Deputy Associate General Counsel

Enclosure
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENTS: Sharron Angle for Congress and Alan B. Mills, MUR 6377
4 in his official capacity as treasurer
5 Sharron E. Angle
6

7 **I. BACKGROUND**

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9 This matter was generated by a complaint filed with the Federal Election Commission by
10 Sam Lieberman, Chair, Nevada State Democratic Party. See 2 U.S.C. § 437g(a)(1). According
11 to the complaint, during the 2010 campaign for Nevada's U.S. Senate seat, Friends of Sharron
12 Angle and Alan B. Mills, in his official capacity as treasurer ("the Angle Committee"), and
13 Sharron E. Angle, accepted excessive in-kind contributions from Harry Reid Votes and Allison
14 Van Over, in her official capacity as treasurer ("HRV"), through their purported agent, Daniel J.
15 "Danny" Tarkanian, in the form of coordinated communications that expressly advocated against
16 Ms. Angle's general election opponent, Senator Harry Reid.¹ See 2 U.S.C. §§ 441a(a)(7)(B)(i)
17 and 441a(f). Mr. Tarkanian had previously lost the 2010 Republican Senate primary in Nevada
18 to Ms. Angle. After his loss, Mr. Tarkanian created and operated HRV. The Angle Committee
19 and Ms. Angle deny the allegations of the complaint.

20 **II. FACTUAL AND LEGAL ANALYSIS**

21 **A. Factual Background**

22 According to the Nevada Secretary of State's website, HRV filed a Non Profit Articles of
23 Incorporation on August 18, 2010, describing as its purpose "to provide public information on
24 federal political races." On August 20, 2010, HRV filed a Notice of Section 527 Status with the
25 Internal Revenue Service ("IRS"), describing its purpose the same way, and it has filed

¹ Harry Reid Votes, Harry Reid Votes, Inc., and www.harryreidvotes.com are the same entity. "HRV" refers to all three designations, unless otherwise specified.

1 disclosure reports with the IRS under Section 527. *See* 26 U.S.C. § 527. On August 24, 2010,
2 HRV filed a Statement of Organization with the Commission, registering as a non-connected
3 political committee with the purpose of opposing Senator Harry Reid. *See*
4 http://query.nictusa.com/cgi-bin/fecimg/?_10030413054+0.

5 HRV has filed 24-Hour and 48-Hour Independent Expenditure Reports, and a 2010
6 October Quarterly Report with the Commission disclosing receipts of contributions and
7 independent expenditures covering the period of August 1, 2010, through October 19, 2010, as a
8 person or group other than a political committee. *See* 2 U.S.C. § 434(c). HRV has not filed any
9 disclosure reports of receipts and disbursements with the Commission as a political committee;
10 the Reports Analysis Division ("RAD") has sent notices concerning HRV's non-filed reports.
11 *See* http://query.nictusa.com/cgi-bin/fecimg/?_10030484425+0; *see also*
12 http://query.nictusa.com/cgi-bin/fecimg/?_11030574539+0.

13 The complaint alleges that Danny Tarkanian was "apparently an agent of the Angle
14 campaign, and yet has also registered and is operating a political committee, HRV, in order to
15 attack Angle's opponent [in Nevada's 2010 U.S. Senate race], Senator Harry Reid." Therefore,
16 the complaint alleges, HRV's expenditures for communications, including a radio advertisement
17 and "planned" television advertisements attacking Senator Reid, constitute coordinated
18 communications, and thus excessive contributions made to Ms. Angle and the Angle Committee.

19 The Angle Committee and Sharron E. Angle deny that any of HRV's public
20 communications were coordinated.

21 **B. Legal Analysis**

22 Expenditures made by any person in cooperation, consultation, or concert, with, or at the
23 request or suggestion of, a candidate, his or her authorized political committees, or their agents,

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1 shall be considered to be a contribution to such candidate. 2 U.S.C. § 441a(a)(7)(B)(i). The
2 Commission's regulations provide that any expenditure for a communication is considered an in-
3 kind contribution to a campaign if it is (1) paid for by an entity other than the campaign,
4 (2) meets certain content standards, including electioneering communications, public
5 communications that contain express advocacy, or public communications that clearly identify a
6 candidate for the Senate within 90 days of an election; and (3) meets certain conduct standards.²
7 See 11 C.F.R. §§ 109.20 and 109.21. For the purpose of coordinated communications, an
8 "agent" is defined as any person who has actual authority, either express or implied, to engage in
9 certain enumerated activities on behalf of a federal candidate, including, *inter alia*, to request or
10 suggest that a communication be created, produced, or distributed; to make or authorize a
11 communication that meets one or more of the content standards set forth in 11 C.F.R.
12 § 109.21(c); to request or suggest that any other person create, produce, or distribute any
13 communication; or to be materially involved in decisions regarding the communication's
14 content, intended audience, means or mode, specific media outlet, timing or frequency, or size or
15 prominence of printed communication, or duration of a communication by means of broadcast,
16 cable or satellite. 11 C.F.R. § 109.3(b)(1)-(6).

17 HRV filed FEC Form 5, Reports of Independent Expenditures Made and Contributions
18 Received, disclosing contributions from individuals and corporations in the amount of \$46,550
19 and independent expenditures of \$39,826.24, all of which were described as opposing candidate
20 Harry Reid. Included in those expenditures were payments of \$2,135 to Red Clay

² The Commission recently revised its coordination communications content prong (11 C.F.R. § 109.21(c)(3) and (c) (5)) in response to the Circuit Court's decision in *Shays v. FEC*, 528 F.3d 914 (D.C. Cir. 2008). The new regulations were effective December 1, 2010. See Explanation and Justification, *Coordinated Communications*, 75 Fed. Reg. 55947 and 55952 (September 15, 2010). Because the activity in this matter occurred prior to December 1, 2010, the prior regulation applies. In any event, the coordination analysis includes only 11 C.F.R. § 109.21(c)(4)(i), not the revised subsections.

1 Communications, Inc. for a radio advertisement on September 1, 2010. It does not appear that
2 HRV ran any of the television advertisements it allegedly planned to run at the time of the
3 complaint.

4 The radio advertisement met the payment and content prongs of the coordination
5 regulations because it was paid for by HRV, an entity other than the campaign, and consisted of
6 a public communication referring to a clearly identified Senate candidate publicly disseminated
7 in the candidate's jurisdiction 90 days or fewer before the general election. *See* 11 C.F.R.
8 §§ 109.21(c)(4)(i), and 100.26. However, based on the complaint, the Angle Committee's
9 response, and as explained below, HRV's expenditure for the radio advertisement does not
10 appear to meet the conduct prong. In addition, the costs associated with the radio advertisement,
11 \$2,135, do not exceed the Act's \$5,000 contribution limit to political committees, and HRV did
12 not make any other contributions to the Angle Committee that would make this alleged in-kind
13 contribution excessive. 2 U.S.C. §§ 441a(a)(1)(C) and 441a(f).

14 Even if the cost of the alleged communications exceeded \$5,000, there is insufficient
15 information that they were coordinated with the Angle Committee. The complaint's allegation
16 that the radio advertisement was coordinated because Mr. Tarkanian was apparently an agent of
17 the Angle Committee rests in part on Tarkanian's appearance at an event called "Gun Rights
18 Night in Nevada," which was paid for and authorized by the Angle Committee, and at which
19 both he and Ms. Angle spoke. The advertisement for the event lists Mr. Tarkanian as a guest
20 speaker on the topic "Is Harry really for gun rights?" and lists key note speaker Angle as the "US
21 Senate Candidate that will defeat Harry Reid." The allegation also relies on Mr. Tarkanian's
22 hosting of "Tark Week," which consisted of seven days of campaigning for the Republican
23 Party, including joining volunteers in calling people to ask them to support Reid's opponent, Ms.

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1 Angle. According to the complaint, “[e]ven apart from Tarkanian technically acting as an agent
2 of Angle’s campaign, HRV’s communications are probably still ‘coordinated communications’”
3 because “Angle or her campaign have probably requested or suggested that HRV create its ads,
4 been materially involved or had substantial discussions about the creation of their ads, or
5 otherwise coordinated their activities.” The Angle Committee and Ms. Angle deny that there
6 was any coordination involving the HRV communications, and contend that Mr. Tarkanian’s
7 appearance as a guest speaker at a campaign event does not meet the conduct prong’s evidentiary
8 standard under 11 C.F.R. § 109.21(d).

9 Based on the complaint’s reasons for alleging that Mr. Tarkanian was an “agent” for
10 coordination purposes, and information in the Commission’s possession, it does not appear that
11 he meets the definition of “agent” set forth at 11 C.F.R. § 109.3(b). Mr. Tarkanian’s
12 volunteering at a phone bank in support of Angle, speaking at an event also featuring the
13 candidate, and registering a political committee to oppose Senator Reid do not, by themselves or
14 in conjunction, show that he had actual authority to create or distribute communications on
15 behalf of the Angle campaign. Nor do these activities provide a sufficient nexus to support the
16 allegation that the Angle Committee “probably” made requests or suggestions, was materially
17 involved in, or had substantial discussions about HRV’s communications, an allegation
18 specifically denied by the Angle Committee. Given that Mr. Tarkanian was a 2010 Republican
19 primary candidate, it is not surprising that he would oppose Senator Reid in the general election.

20 Therefore, there is no reason to believe that Friends of Sharron Angle and Alan B. Mills,
21 in his official capacity as treasurer, and Sharron E. Angle violated 2 U.S.C. § 441a(f).

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