



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**VIA FIRST CLASS MAIL & FACSIMILE**

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July 15, 2011

RE: MUR 6377  
Harry Reid Votes and Allison Van Over,  
in her official capacity as treasurer  
Daniel J. Tarkanian

Dear Mr. Sanderson:

On September 23, 2010, the Federal Election Commission notified your clients, Harry Reid Votes and Allison Van Over, in her official capacity as treasurer ("the Committee"), and Daniel J. Tarkanian, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). 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 Harry Reid Votes and Allison Van Over, in her official capacity as treasurer, and Daniel J. Tarkanian violated 2 U.S.C. § 441a(a). In addition, on June 14, 2011, there were an insufficient number of votes to find reason to believe the Committee violated 2 U.S.C. § 432(e)(4). Further, on June 14, 2011, the Commission voted to dismiss the allegations that the Committee violated 2 U.S.C. § 441d(a). Accordingly, the Commission closed its file in this matter.

Based on the information before the Commission concerning MUR 6377, it appears that the Committee paid for a radio advertisement airing on September 1, 2010, which contained disclaimers that did not include the Committee's permanent street address, that it paid for the communication, and that the communication was not authorized by any candidate or candidate's committee. The Act and Commission regulations require all public communications, as defined by 11 C.F.R. § 100.26, to contain a disclaimer including, *inter alia*, the name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication, and when the communication is not authorized by a candidate, an authorized political committee of a candidate, or its agents, to state that the communication is not authorized by a candidate or candidate's committee. 2 U.S.C. § 441d(a)(3) and 11 C.F.R. § 110.11(b)(3). The Commission cautions the Committee to take steps to ensure that it complies with all disclaimer requirements in accordance with the Act and Commission regulations.

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,

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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 findings with respect to the 2 U.S.C. §§ 441a(a) and 441d(a) allegations is enclosed. A Statement of Reasons regarding the 2 U.S.C. § 432(e)(4) allegation will follow.

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

Enclosed:  
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENTS: Harry Reid Votes and Allison Van Over, MUR 6377  
4 in her official capacity as treasurer  
5 Daniel J. Tarkanian  
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, Harry Reid Votes and  
12 Allison Van Over, in her official capacity as treasurer ("HRV"), made excessive in-kind  
13 contributions to Friends of Sharron Angle and Alan B. Mills, in his official capacity as treasurer  
14 ("the Angle Committee"), and Sharron E. Angle, 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.<sup>1</sup> See 2 U.S.C. § 441a(a)(7)(B)(i).  
17 Mr. Tarkanian had previously lost the 2010 Republican Senate primary in Nevada to Ms. Angle.  
18 After his loss, Mr. Tarkanian created and operated HRV. The complaint further alleges that the  
19 title "Harry Reid Votes" violates 2 U.S.C. § 432(e)(4) of the Federal Election Campaign Act of  
20 1971, as amended, ("the Act"), which prohibits unauthorized committees from using the name of  
21 a federal candidate in its title. Last, the complaint alleges that HRV's radio advertisement that  
22 aired on September 1, 2010, did not include the appropriate disclaimer because it is a public  
23 communication and did not state that it was "Paid for by Harry Reid Votes," did not include its  
24 address, phone number, or web address, nor a statement whether it was authorized by any  
25 candidate. See 2 U.S.C. § 441d. HRV and Mr. Tarkanian deny the allegations of the complaint.

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<sup>1</sup> Harry Reid Votes, Harry Reid Votes, Inc., and [www.harryreidvotes.com](http://www.harryreidvotes.com) are the same entity. "HRV" refers to all three designations, unless otherwise specified.

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Factual Background**

According to the Nevada Secretary of State's website, HRV filed a Non Profit Articles of Incorporation on August 18, 2010, describing as its purpose "to provide public information on federal political races." On August 20, 2010, HRV filed a Notice of Section 527 Status with the Internal Revenue Service ("IRS"), describing its purpose the same way, and it has filed disclosure reports with the IRS under Section 527. *See* 26 U.S.C. § 527. On August 24, 2010, HRV filed a Statement of Organization with the Commission, registering as a non-connected political committee with the purpose of opposing Senator Harry Reid. *See* [http://query.nictusa.com/cgi-bin/fecimg/?\\_10030413054+0](http://query.nictusa.com/cgi-bin/fecimg/?_10030413054+0). After the Commission notified HRV that the instant complaint had been filed against it, HRV submitted a letter to the Commission stating that it had filed the Statement of Organization in error, and that it is not a political action committee or independent expenditure committee. Due to the ongoing enforcement matter and consistent with usual practice, HRV's letter was treated as a termination request and denied pending the resolution of the MUR. Counsel for HRV then submitted a letter stating that HRV's previous letter was not a request to terminate, but rather was meant to inform the Commission that its Statement of Organization was "void" and that it would not therefore be filing disclosure reports with the Commission.

HRV has filed 24-Hour and 48-Hour Independent Expenditure Reports, and a 2010 October Quarterly Report with the Commission disclosing receipts of contributions and independent expenditures covering the period of August 1, 2010, through October 19, 2010, as a person or group other than a political committee. *See* 2 U.S.C. § 434(c). HRV has not filed any disclosure reports of receipts and disbursements with the Commission as a political committee;

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1 the Reports Analysis Division (“RAD”) has sent notices concerning HRV’s non-filed reports.

2 See [http://query.nictusa.com/cgi-bin/fecimg/?\\_10030484425+0](http://query.nictusa.com/cgi-bin/fecimg/?_10030484425+0); see also

3 [http://query.nictusa.com/cgi-bin/fecimg/?\\_11030574539+0](http://query.nictusa.com/cgi-bin/fecimg/?_11030574539+0).

4 According to the complaint, Danny Tarkanian was “apparently an agent of the Angle  
5 campaign, and yet has also registered and is operating a political committee, HRV, in order to  
6 attack Angle’s opponent [in Nevada’s 2010 U.S. Senate race], Senator Harry Reid.” Therefore,  
7 the complaint alleges, HRV’s expenditures for communications, including a radio advertisement  
8 and “planned” television advertisements attacking Senator Reid, constitute coordinated  
9 communications, and thus excessive contributions made to Ms. Angle and the Angle Committee.  
10 The complaint further alleges that the disclaimer on HRV’s radio advertisement was deficient,  
11 and that HRV impermissibly uses the name of a federal candidate in its title.

12 HRV and Mr. Tarkanian submitted a joint response denying that Mr. Tarkanian was an  
13 “agent,” as defined by the Commission’s regulations, of the Angle Committee because he did not  
14 possess actual authority to represent the Angle campaign within the meaning of 11 C.F.R.  
15 § 109.3(b). The HRV Response also states that HRV’s radio advertisement contained an  
16 adequate disclaimer, and the presence of Harry Reid’s name in its title does not violate the  
17 prohibition against any unauthorized political committee using the name of any candidate in its  
18 name because it is not a federal political committee.

19 **B. Legal Analysis**

20 **1. Coordination Allegations**

21 Expenditures made by any person in cooperation, consultation, or concert, with, or at the  
22 request or suggestion of, a candidate, his or her authorized political committees, or their agents,  
23 shall be considered to be a contribution to such candidate. 2 U.S.C. § 441a(a)(7)(B)(i). The

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Commission's regulations provide that any expenditure for a communication is considered an in-kind contribution to a campaign if it is (1) paid for by an entity other than the campaign, (2) meets certain content standards, including electioneering communications, public communications that contain express advocacy, or public communications that clearly identify a candidate for the Senate within 90 days of an election; and (3) meets certain conduct standards.<sup>2</sup>

See 11 C.F.R. §§ 109.20 and 109.21. For the purpose of coordinated communications, an "agent" is defined as any person who has actual authority, either express or implied, to engage in certain enumerated activities on behalf of a federal candidate, including, *inter alia*, to request or suggest that a communication be created, produced, or distributed; to make or authorize a communication that meets one or more of the content standards set forth in 11 C.F.R. § 109.21(c); to request or suggest that any other person create, produce, or distribute any communication; or to be materially involved in decisions regarding the communication's content, intended audience, means or mode, specific media outlet, timing or frequency, or size or prominence of printed communication, or duration of a communication by means of broadcast, cable or satellite. 11 C.F.R. § 109.3(b)(1)-(6).

HRV filed FEC Form 5, Reports of Independent Expenditures Made and Contributions Received, disclosing contributions from individuals and corporations in the amount of \$46,550 and independent expenditures of \$39,826.24, all of which were described as opposing candidate Harry Reid. Included in those expenditures were payments of \$2,135 to Red Clay Communications, Inc. for a radio advertisement on September 1, 2010. It does not appear that

<sup>2</sup> 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 HRV ran any of the television advertisements it allegedly planned to run at the time of the  
2 complaint.

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

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

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1 of Angle's campaign, HRV's communications are probably still 'coordinated communications'"  
2 because "Angle or her campaign have probably requested or suggested that HRV create its ads,  
3 been materially involved or had substantial discussions about the creation of their ads, or  
4 otherwise coordinated their activities."

5 To support its position that there was no coordination, the HRV Response attaches a  
6 sworn declaration from Mr. Tarkanian in which he avers that he does not hold, nor has he ever  
7 held a position within the Angle campaign. He further avers that he does not possess any  
8 authority from the Angle campaign to request or suggest that a communication be created,  
9 produced, or distributed; make or authorize any communication; or be materially involved in  
10 decisions or hold substantial discussions regarding communications. He further avers that he has  
11 not received any non-public information about the plans, projects, activities, or needs of the  
12 Angle campaign; and, to his knowledge, no agent of the Angle campaign has requested,  
13 suggested, or assented to any communication sponsored by HRV, nor had any material  
14 involvement in the creation, production, or distribution of any communication sponsored by  
15 HRV. *See* 11 C.F.R. § 109.3(b).

16 HRV and Mr. Tarkanian contend that campaigning for the Republican Party, joining  
17 volunteers at a phone bank, and serving as a guest speaker at an event do not prove that Mr.  
18 Tarkanian was an "agent" of the Angle campaign. They further maintain that the conduct  
19 standards of 11 C.F.R. § 109.21(d) have not otherwise been met, because the expenditures for the  
20 radio advertisement were not made at the request or suggestion of the Angle campaign, nor was  
21 there any material involvement, or substantial discussion regarding the advertisements between  
22 Mr. Tarkanian and the Angle Committee. *See* 11 C.F.R. § 109.3(b).

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Based on the complaint's reasons for alleging that Mr. Tarkanian was an "agent" for coordination purposes, and Mr. Tarkanian's sworn declaration, it does not appear that he met the definition of "agent" set forth at 11 C.F.R. § 109.3(b). Mr. Tarkanian's volunteering at a phone bank in support of Angle, speaking at an event also featuring the candidate, and registering a political committee to oppose Senator Reid do not, by themselves or in conjunction, show that he had actual authority to create or distribute communications on behalf of the Angle campaign. Nor do these activities provide a sufficient nexus to support the allegation that the Angle Committee "probably" made requests or suggestions, was materially involved in, or had substantial discussions about HRV's communications, an allegation specifically denied by Mr. Tarkanian. Given that Mr. Tarkanian was a 2010 Republican primary candidate, it is not surprising that he would oppose Senator Reid in the general election. Therefore, the Commission concludes there is no reason to believe Harry Reid Votes and Allison Van Over in her official capacity as treasurer, and Daniel J. Tarkanian violated 2 U.S.C. § 441a(a).

## **2. Alleged Disclaimer Violation**

All public communications, as defined by 11 C.F.R. § 100.26, made by a political committee must include a disclaimer. 2 U.S.C. § 441d(a) and 11 C.F.R. § 110.11(a)(1). If the communication is not authorized by a candidate, an authorized political committee of a candidate, or its agents, it must clearly state the name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication, and that the communication is not authorized by any candidate or candidate's committee. 2 U.S.C. § 441d(a)(3) and 11 C.F.R. § 110.11(b)(3). A radio communication that is not authorized by a candidate or the candidate's authorized committee must also include an audio statement that "\_\_\_\_\_ is responsible for the content of this advertising" with the name of the political

1 committee or other person paying for the communication in the blank. *See* 2 U.S.C. § 441d(d)(2)  
2 and 11 C.F.R. § 110.11(c)(4)(i).

3 HRV alleges that the disclaimer rules do not apply to the radio advertisement because it  
4 is not an electioneering communication given that it aired more than 60 days before the 2010  
5 general election. *See* 11 C.F.R. §§ 100.29 and 110.11(a)(4). HRV also alleges that even if the  
6 disclaimer rules do apply, they were not violated because the radio advertisement contained the  
7 statement "Harry Reid Votes is responsible for the content of this advertising" and included  
8 HRV's website address. *Id.*

9 A transcript of the radio advertisement is as follows:

10 SPOT ONE: WAGING WAR

11  
12 Right now, a war is being waged in Nevada. Liberals are funneling  
13 millions into our state to reelect their puppet Harry Reid. What Does  
14 Nevada say? NO MORE.  
15 NO MORE to Senator Reid's uncontrolled spending.  
16 NO MORE to his secret backroom meetings that will bankrupt future  
17 generations.  
18 NO MORE to his taxes on hardworking families and businesses.  
19 Protect Nevada today by visiting HarryReidVotes.com to learn 1001  
20 reasons to fire Harry Reid.  
21 Harry Reid Votes is responsible for the content of this advertisement.

22 *See* [http://www.advocacyink.com/posts/independent-political-committee-launches-statewide-  
radio-buy-harryreidvotescom-to-run-1st-in-s.com](http://www.advocacyink.com/posts/independent-political-committee-launches-statewide-<br/>23 radio-buy-harryreidvotescom-to-run-1st-in-s.com) (last accessed March 16, 2011).

24 The disclaimer for this radio advertisement, which is a public communication, does not  
25 fully comply with the Act and the Commission's regulations. Because HRV was a registered  
26 non-connected political committee when it ran this advertisement (which was before it notified  
27 the Commission that it considered its registration an error), the disclaimer should have included

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1 its permanent street address, that it paid for the communication, and that the communication was  
2 not authorized by any candidate or candidate's committee. 2 U.S.C. § 441d(a)(3) and 11 C.F.R.  
3 § 110.11(b)(3). It apparently complied with the audio statement required for radio  
4 communications, and included its name and website address. *See* 2 U.S.C. § 441d(d)(2) and  
5 11 C.F.R. § 110.11(c)(4)(i). Based on the relatively low cost of the radio advertisement, \$2,135,  
6 the Commission does not believe it would be a good use of its resources to pursue the apparent  
7 2 U.S.C. § 441d(a) violation to conciliation by itself. Therefore, the Commission exercises its  
8 prosecutorial discretion to dismiss the allegation that Harry Reid Votes and Allison Van Over in  
9 her official capacity as treasurer violated 2 U.S.C. § 441d(a). *See Heckler v. Chaney*, 470 U.S.  
10 821 (1985).

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