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Washington, D.C. 20463

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**FIRST GENERAL COUNSEL'S REPORT**

**CELA**

MUR: 6404

DATE COMPLAINT FILED: 10/21/10

DATE OF NOTIFICATION: 10/28/10

LAST RESPONSE RECEIVED: 01/7/11

DATE ACTIVATED: 01/28/11

EXPIRATION OF SOL: 10/18/15 – 11/2/15

**COMPLAINANT:**

Carmen Marie Darland

**RESPONDENTS:**

Stutzman for Congress and Amber L. Taylor, in her  
official capacity as Treasurer  
Noble County Republican Central Committee

**RELEVANT STATUTES AND  
REGULATIONS:**

2 U.S.C. § 441d  
11 C.F.R. § 110.11  
11 C.F.R. § 100.22(a)

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

The complaint alleges that three campaign road signs and a billboard advertisement supporting the election of Indiana House candidate Marlin Stutzman did not contain disclaimers about authorization and payment. The respondents, Stutzman for Congress and Amber L. Taylor, in her official capacity as treasurer ("Committee"), and the Noble County Republican Central Committee ("NCRCC"), deny any involvement or knowledge regarding the "signs" but do not specifically address the billboard advertisement. Upon review of the complaint, responses, and available information, there appears to be no basis for concluding that the Committee or the NCRCC produced or disseminated the road signs. Therefore, we recommend

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1 that the Commission find no reason to believe that the respondents violated 2 U.S.C. § 441d as to  
2 the road signs. We further recommend that the Commission dismiss the complaint as to the  
3 respondents regarding the billboard advertisement, pursuant to *Heckler v. Chaney*, 470 U.S. 821,  
4 831 (1985), due to the relatively low cost of the communication, and close the file.

5 **II. FACTUAL AND LEGAL ANALYSIS**

6 **A. Factual Summary**

7 Complainant, a local Democratic Party Chair in Indiana, alleges that three large, identical  
8 campaign road signs and a billboard advertisement in and around Kendallville, Indiana, that  
9 advocated the election of federal House candidate Marlin Stutzman failed to contain disclaimers  
10 regarding who authorized and paid for them. The road signs were located along U.S. Highway 6,  
11 a state road, and a city street. The billboard was on a state road, near a U.S. highway  
12 intersection. The complainant states that she asked the Stutzman campaign and the local  
13 Republican Party Chair to remove the road signs and address the matter.

14 The complainant included photographs of a road sign and the billboard. See Complaint,  
15 p. 3. The complainant described the road signs as "two sided chloroplast with 3 color print." *Id.*  
16 at 1. The road signs state, "WHO'S REALLY BEHIND HAYHURST" with the "T" of  
17 Hayhurst pulled back to reveal "OBAMA." The signs continue, "Vote Marlin Stutzman The  
18 Clear Choice." (Emphasis in original). Also available at <http://goo.gl/q6KBY>. The billboard  
19 advertisement states, "A Vote For Hayhurst is a Vote For Obama. Marlin Stutzman. The Clear  
20 Choice." There also appears to be a "pull-back" effect using Hayhurst and Obama's names,  
21 similar to the road sign advertisement. See Complaint, p. 3. The complainant's allegation  
22 concerning the billboard is handwritten and appears on the second page of the complaint below  
23 the typed text regarding the road signs. *Id.* at 1-2.

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1 The Committee, which is Marlin Stutzman's authorized committee, responds that neither  
2 it nor Stutzman paid for or authorized the "signs," and that the Committee has no information  
3 regarding the identity of the person or organization that had the signs produced and posted.  
4 Committee Response at 1.

5 The NCRCC responds that it was neither aware of nor responsible for the "signs" and did  
6 not sanction them. NCRCC Response at 1. Randall L. Kirkpatrick, the NCRCC Chairman,  
7 states that the complainant called him about the road signs and that he then called Stutzman. *Id.*  
8 at 1-2. Stutzman replied that he was not aware of the signs and did not know who was  
9 responsible for them. *Id.* at 2. As to the billboard at issue, the responses do not specifically  
10 address whether the respondents produced, paid for, or disseminated this communication. We  
11 sent the respondents a letter inviting them to clarify their responses to address the billboard  
12 advertisement, but we have yet to receive a response.

13 **B. Legal Analysis**

14 The Federal Election Campaign Act of 1971, as amended (the "Act"), requires that  
15 whenever a political committee makes a disbursement for the purpose of financing any  
16 communication through any outdoor advertising facility or any other type of general public  
17 political advertising, or whenever any person makes a disbursement for the purpose of financing  
18 communications expressly advocating the election or defeat of a clearly identified candidate,  
19 such communication must include certain information. 2 U.S.C. § 441d(a) and 11 C.F.R.  
20 § 110.11. Specifically, the communication must disclose who paid for the communication;  
21 whether it was authorized by a candidate, an authorized political committee of a candidate, or its  
22 agents; and if not authorized by a candidate, authorized political committee of a candidate or its  
23 agents, the name, address, phone number or web address of the person who paid for the

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1 communication and that it was not authorized by any candidate or authorized committee of a  
2 candidate. 2 U.S.C. § 441d(a)(1)-(3). Moreover, the payment, authorization, and identification  
3 information must be printed in a box in sufficiently-sized type and with adequate color contrast.  
4 2 U.S.C. § 441d(c).

5 Under the Commission's regulations, a communication contains express advocacy when  
6 it uses phrases, such as "Vote for the President," or uses campaign slogans or individual words  
7 "which in context can have no other reasonable meaning than to encourage the election or defeat  
8 of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements,  
9 etc. which say 'Nixon's the One,' 'Carter '76,' 'Reagan/Bush' or 'Mondale!'" 11 C.F.R.  
10 § 100.22(a).

11 The Stutzman road signs and billboard advertisement are communications that constitute  
12 outdoor advertising or general public political advertising such that the disclaimer requirements  
13 of 2 U.S.C. § 441d(a) apply. Moreover, the communications include the phrases "Vote Marlin  
14 Stutzman" and "Marlin Stutzman. The Clear Choice," which constitute express advocacy for  
15 Stutzman under 11 C.F.R. § 100.22(a).<sup>1</sup> Thus, whether a political committee or a person paid for  
16 and disseminated the road signs and billboard advertisement, the communications should have  
17 complied with section 441d(a).

18 The complainant suggests that the Committee and/or the NCRCC disseminated the  
19 advertisements. The respondents state unequivocally that they did not disseminate the "signs,"  
20 and there is no publicly available information indicating otherwise. Based on these factors, we  
21 recommend that the Commission find no reason to believe that Marlin Stutzman for Congress

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<sup>1</sup> There is no publicly available information indicating that the Stutzman Committee used any statements displayed on the communications at issue as campaign slogans.

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1 and Amber L. Taylor, in her official capacity as treasurer, or the Noble County Republican  
2 Central Committee violated 2 U.S.C. § 441d(a) with respect to the road signs.

3 As for the billboard advertisement, there is no publicly available information regarding  
4 the source of the communication. While the respondents deny that they were responsible for the  
5 creation or dissemination of the "signs," they do not specifically address the allegation regarding  
6 the billboard at issue. As the allegation regarding the billboard advertisement was handwritten  
7 on the last page of the complaint, and the complaint and responses refer to a phone call between  
8 the parties regarding only the road signs, it is possible that the respondents' failure to expressly  
9 mention the billboard was inadvertent. On the other hand, the complaint attaches a photograph  
10 of the billboard, so the respondents should have been aware of the allegation. Under these  
11 circumstances, the information is inconclusive whether the named respondents in this matter  
12 were responsible for the billboard. As such, like the road signs, we are unsure as to the identity  
13 of the person or entity responsible for the billboard. Therefore, an investigation would be needed  
14 to identify who paid for and disseminated the road signs and billboard advertisement.

15 The photograph of the Stutzman billboard advertisement contains one lead to possibly  
16 obtaining more information – the name of the billboard advertising vender, which is an Indiana  
17 company called Burkhart. Burkhart appears to sell space on outdoor advertising locations and  
18 also creates advertising signs. See [www.burkhartadv.com](http://www.burkhartadv.com). If the Commission were to make a  
19 reason to believe finding and authorize an investigation, we could ask Burkhart to identify the  
20 person or group that placed the Stutzman billboard. It is also likely that such information would  
21 identify the person or group that disseminated the road signs, as the signs are similar to the  
22 billboard and were apparently placed at the same time.

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1           Nevertheless, we do not think it is worth the use of the Commission's resources to  
2 investigate this matter. Here, it appears that the costs for the road signs and one billboard were  
3 likely small. A Google search for "two sided chloroplast with 3 color print" reveals costs for  
4 similar road signs to be in the range of \$3 or less per sign, with minimum orders of 50 to 100  
5 signs. *See, e.g.,* <http://yardsigns.org/wholesigns.html>. Also, Burkhardt's website contains a price  
6 list, albeit from 2007/2008, which shows the advertising rate for a similarly-sized billboard in  
7 Noble County to be \$536 for a four-week period.<sup>2</sup> *See* <http://geo.gl/Jyvft>. Thus, it appears that  
8 if the Commission were to pursue further action, even factoring in the unknown production costs  
9 for the billboard and the current market rate, the amount in violation would likely be less than  
10 \$2,000. *Compare* MUR 5583 (Unknown Respondents a/k/a/ someone who loves Jesus and  
11 Friends of swlj) (Commission found reason to believe as to unknown respondents in disclaimer  
12 case involving more than 1,000 express advocacy mailings) and MUR 4919 (East Bay  
13 Democrats) (Commission found reason to believe unknown respondents knowingly and willfully  
14 violated disclaimer provision in thousands of mailers and phone calls and concealed themselves  
15 behind fake name). *See also* MUR 5549 (Adams) (Commission filed suit over \$1 million in  
16 independent expenditures for billboards placed across three states; Commission sought statutory  
17 penalty for partially deficient disclaimers that were subsequently corrected). Investigating a  
18 matter with such a low potential amount in violation would not be an efficient use of  
19 Commission resources.

20           Accordingly, in light of the limited number of known communications and their apparent  
21 low cost, we recommend that the Commission exercise its prosecutorial discretion and dismiss  
22 the complaint's allegations that Marlin Stutzman for Congress and Amber L. Taylor, in her

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<sup>2</sup> From the photograph in the complaint, it appears that the billboard is a small "poster panel" and not a large "bulletin." *See* [http://www.burkhartadv.com/rates\\_in.htm](http://www.burkhartadv.com/rates_in.htm).

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- 1 official capacity as treasurer, or the Noble County Republican Central Committee violated  
2 2 U.S.C. § 441d(a) with respect to the billboard advertisement. *See Heckler v. Chaney*, 470 U.S.  
3 821, 831 (1985). We also recommended that the Commission close the file.

4 **III. RECOMMENDATIONS**

- 5 1. Find no reason to believe that Marlin Stutzman for Congress and Amber L.  
6 Taylor, in her official capacity as Treasurer, violated 2 U.S.C. § 441d with respect  
7 to the road signs.  
8  
9 2. Find no reason to believe that the Noble County Republican Central Committee  
10 violated 2 U.S.C. § 441d with respect to the road signs.  
11  
12 3. Dismiss the allegation that Marlin Stutzman for Congress and Amber L. Taylor,  
13 in her official capacity as Treasurer, violated 2 U.S.C. § 441d with respect to the  
14 billboard advertisement.  
15  
16 4. Dismiss the allegation that the Noble County Republican Central Committee  
17 violated 2 U.S.C. § 441d with respect to the billboard advertisement.  
18  
19 5. Approve the attached Factual and Legal Analyses.  
20  
21 6. Approve the appropriate letters.

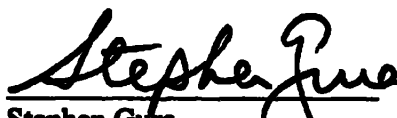
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7. Close the file.


Christopher Hughey  
Acting General Counsel

4/28/11  
Date

BY:

  
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