



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

JUN 17 2011

Stutzman for Congress  
Amber L. Taylor, Treasurer  
P.O. Box 129  
Howe, Indiana 46746

RE: MUR 6404  
Stutzman for Congress and Amber  
L. Taylor, in her official capacity as  
Treasurer

Dear Ms. Taylor:

On October 28, 2010, the Federal Election Commission notified Stutzman for Congress and you, as treasurer ("Committee"), 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 the Committee, that there is no reason to believe the Committee violated 2 U.S.C. § 441d regarding the road signs. On the same date, the Commission determined to dismiss the complaint as to the billboard advertisement. 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 Elena Paoli, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

Roy Q. Luckett  
Acting Assistant General Counsel

Enclosure  
Factual and Legal Analysis

11044294883

**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT:** Stutzman for Congress and  
Amber L. Taylor, in her official capacity as treasurer **MUR: 6404**

**I. GENERATION OF MATTER**

This matter was generated by a complaint filed with the Federal Election Commission by Carmen Marie Darland. *See* 2 U.S.C. § 437g(a)(1).

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Facts**

Complainant, a local Democratic Party Chair in Indiana, alleges that three large, identical campaign road signs and a billboard advertisement in and around Kendallville, Indiana, that advocated the election of federal House candidate Marlin Stutzman failed to contain disclaimers regarding who authorized and paid for them. The road signs were located along U.S. Highway 6, a state road, and a city street. The billboard was on a state road, near a U.S. highway intersection. The complainant states that she asked Stutzman for Congress and Amber L. Taylor, in her official capacity as treasurer, ("the Committee") and the local Republican Party Chair to remove the signs and address the matter.

The complainant included photographs of a road sign and the billboard. *See* Complaint, p. 3. The complainant described the road signs as "two sided chloroplast with 3 color print." *Id.* at 1. The road signs state, "WHO'S REALLY BEHIND HAYHURST" with the "T" of Hayhurst pulled back to reveal "OBAMA." The signs continue, "Vote Marlin Stutzman The Clear Choice." (Emphasis in original). *Also available at* <http://goo.gl/q6KBY>. The billboard advertisement states, "A Vote For Hayhurst is a Vote For Obama. Marlin Stutzman. The Clear

1 Choice.” There also appears to be a “pull-back” effect using Hayhurst and Obama’s names,  
2 similar to the road sign advertisement. *See* Complaint, p. 3. The complaint’s allegation  
3 concerning the billboard is handwritten and appears on the second page of the complaint below  
4 the typed text regarding the road signs. *Id.* at 1-2.

5 The Committee, which is Marlin Stutzman’s authorized committee, responds that neither  
6 it nor Stutzman paid for or authorized the road signs, and that the Committee has no information  
7 regarding the identity of the person or organization that had the road signs produced and posted.  
8 Committee Response at 1. As to the billboard at issue, the response does not specifically address  
9 whether the Committee produced, paid for, or disseminated this communication. The Office of  
10 General Counsel sent the Committee a letter inviting it to clarify its response to address the  
11 billboard advertisement but did not receive a response.

12 **B. Legal Analysis**

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

1 candidate. 2 U.S.C. § 441d(a)(1)-(3). Moreover, the payment, authorization, and identification  
2 information must be printed in a box in sufficiently-sized type and with adequate color contrast.  
3 2 U.S.C. § 441d(c).

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

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

17 The complainant suggests that the Committee disseminated the advertisements.  
18 However, the respondent states unequivocally that it did not do so as to the road signs, and there  
19 is no publicly available information indicating otherwise. Based on these factors, the  
20 Commission has determined to find no reason to believe that Marlin Stutzman for Congress and  
21 Amber L. Taylor, in her official capacity as treasurer, violated 2 U.S.C. § 441d(a) with respect to  
22 the road signs.

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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.

1 As for the billboard advertisement, there is no publicly available information regarding  
2 the source of the communication. While the respondent denies that it was responsible for the  
3 creation or dissemination of the road signs, it is silent about its involvement with the billboard at  
4 issue. As the allegation regarding the billboard advertisement was handwritten on the last page  
5 of the complaint, it is possible that the respondent's failure to expressly mention the billboard  
6 was inadvertent. On the other hand, the complaint attaches a photograph of the billboard, so the  
7 respondent should have been aware of the allegation. Under these circumstances, the  
8 information is inconclusive whether the Committee was responsible for the billboard.

9 Nevertheless, it is likely that the total cost of one billboard advertisement was relatively  
10 small. Burkhart, the billboard advertising vendor that apparently sold the space that displayed  
11 the communication at issue, has a price list on its website, albeit from 2007/2008, which shows  
12 the advertising rate of a similarly-sized billboard in Noble County to be \$536 for a four-week  
13 period. Even factoring in the unknown production costs and the current market rate for the  
14 billboard, the billboard's relatively low total cost does not warrant further use of Commission  
15 resources for an investigation. Therefore, the Commission has determined to exercise its  
16 prosecutorial discretion and dismiss the allegation that Marlin Stutzman for Congress and Amber  
17 L. Taylor, in her official capacity as treasurer, violated 2 U.S.C. § 441d(a) with respect to the  
18 billboard advertisement. *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985).