



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

JUN 17 2011

Noble County Republican Central Committee  
Randall L. Kirkpatrick, Chairman  
P.O. Box 125  
Albion, Indiana 46701

RE: MUR 6404  
Noble County Republican Central  
Committee

Dear Mr. Kirkpatrick:

On October 28, 2010, the Federal Election Commission notified the Noble County Republican Central Committee ("NCRCC") 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 NCRCC, that there is no reason to believe the NCRCC 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. Lockett  
Acting Assistant General Counsel

Enclosure  
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Noble County Republican MUR: 6404  
Central Committee

**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 the Stutzman campaign 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 Choice." There also appears to be a "pull-back" effect using Hayhurst and Obama's names,

1 similar to the road sign advertisement. *See* Complaint, p. 3. The complaint's allegation  
2 concerning the billboard is handwritten and appears on the second page of the complaint below  
3 the typed text regarding the road signs. *Id.* at 1-2.

4 The NCRCC responds that it was neither aware of nor responsible for the road signs and  
5 did not sanction them. NCRCC Response at 1. Randall L. Kirkpatrick, the NCRCC Chairman,  
6 states that the complainant called him about the signs and that he then called Stutzman. *Id.* at 1-  
7 2. Kirkpatrick states that Stutzman replied that he was not aware of the road signs and did not  
8 know who was responsible for them. *Id.* at 2. As to the billboard at issue, the response does not  
9 specifically address whether the NCRCC produced, paid for, or disseminated this  
10 communication. The Office of General Counsel sent the NCRCC a letter inviting it to clarify its  
11 response to address the 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 constitutes express advocacy for  
14 Stutzman under 11 C.F.R. § 100.22(a). Thus, whether a political committee or a person paid for  
15 and disseminated the road signs and billboard advertisement, the communications should have  
16 complied with section 441d(a).

17 The complainant suggests that the NCRCC disseminated the advertisements. However,  
18 the respondent states unequivocally that it did not do so as to the road signs, and there is no  
19 publicly available information indicating otherwise. Based on these factors, the Commission has  
20 determined to find no reason to believe that the Noble County Republican Central Committee  
21 violated 2 U.S.C. § 441d(a) with respect to the road signs.

22 As for the billboard advertisement, there is no publicly available information regarding  
23 the source of the communication. While the respondent denies that it was responsible for the

1 creation or dissemination of the road signs, it is silent about its involvement with the billboard at  
2 issue. As the allegation regarding the billboard advertisement was handwritten on the last page  
3 of the complaint, and the complaint and response refer to a phone call between the parties  
4 regarding only the road signs, it is possible that the respondent's failure to expressly mention the  
5 billboard was inadvertent. On the other hand, the complaint attaches a photograph of the  
6 billboard, so the respondent should have been aware of the allegation. Under these  
7 circumstances, the information is inconclusive whether the NCRCC was responsible for the  
8 billboard.

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