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FIRST GENERAL COUNSEL'S REPORT

MUR: 6557

DATES COMPLAINTS FILED: April 17, 2012
April 20, 2012
April 23, 2012

DATE OF NOTIFICATION: April 24, 2012
DATE ACTIVATED: July 24, 2012

EXPIRATION OF SOL: March 29, 2017 -
April 27, 2017

COMPLAINANTS:

John Erickson
Scott Gransted
Thomas P. Hanley

RESPONDENTS:

Kootenai County Reagan Republicans
Reagan Republican Victory Fund
The Strategery Group, Inc.
Jeff Ward
Keith Hutcheson
Barry McHugh
Todd Tondoe
Dan Green

RELEVANT STATUTES
AND REGULATIONS:

2 U.S.C. § 431(4)
2 U.S.C. § 433
2 U.S.C. § 434
2 U.S.C. § 441d
11 C.F.R. § 100.22
11 C.F.R. § 109.10
11 C.F.R. § 110.11(a)(2)

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

This respondent was identified in the complaints as "Strategery, Inc." It was subsequently identified as "The Strategery Group, Inc." in a response to the Complaint.

1 I. INTRODUCTION

2 According to the three Complaints, which are nearly identical, the Kootenai County
3 Reagan Republicans ("KCRR"), Jeff Ward (KCRR's treasurer), the Strategy Group, Inc., and
4 four candidates for local office in Kootenai County, Idaho — Keith Hutcheson, Barry McHugh,
5 Todd Tondee, and Dan Green — disseminated a mailer to voters in Kootenai County that
6 endorsed federal and state candidates. The Complaints allege that the Respondents violated the
7 Federal Election Campaign Act of 1971, as amended (the "Act") because they spent over \$1,000
8 for a federal candidate without "filing with" the Commission.²

9 Upon review of the Complaints, Responses, and other available information, it does not
10 appear that the Respondents were required to register and report with the Commission as a
11 political committee. It does appear, however, that RRVF failed to report its expenditure for the
12 federal candidate's share of the mailer as an independent expenditure and failed to include a
13 complete disclaimer on the mailer. Given the small amount in violation and other mitigating
14 factors, we recommend that the Commission dismiss the independent expenditure reporting and
15 disclaimer violations as a matter of prosecutorial discretion, send a letter of caution to RRVF,
16 and close the file.

17 II. FACTUAL AND LEGAL ANALYSIS

18 A. Facts

19 According to KCRR's website, it is located in Post Falls, Idaho. See
20 www.reaganrepublicans.net. Ron Lahr is KCRR's president, Jeff Ward is KCRR's treasurer,
21 and Keith Hutcheson is a KCRR board member. See <http://www.reaganrepublicans.net/>

² The Office of General Counsel also identified as a Respondent the Reagan Republican Victory Fund ("RRVF"), an Idaho state political committee that paid for the mailer attached to the Complaints.

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1 KCRRBoard.html. KCRR's articles of incorporation state that it is organized as an
2 unincorporated nonprofit social welfare public benefit organization under Idaho state law and
3 within the meaning of 26 U.S.C. § 501(c)(4). See <http://www.reaganrepublicans.net/>
4 Articles.html. KCRR describes its mission as supporting the Republican Party and the principles
5 of limited government and a free enterprise economy espoused by President Ronald Reagan. See
6 <http://www.reaganrepublicans.net/mission.html>.

7 RRVF is an Idaho state political committee that is also located in Post Falls, Idaho. Its
8 disclosure reports filed with the Idaho Secretary of State list Lorn Gervais as RRVF's chair and
9 Jeff Ward as RRVF's treasurer.³ See <http://www.sos.idaho.gov/elect/Finance/2012/>
10 PrePrimary/Party/ReaganRepublicansVictoryFund.pdf.

11 It is unclear how KCRR and RRVF are connected. The groups share a mailing address at
12 P.O. Box 1274 in Post Falls, Idaho, and appear to have at least some overlap in officers, as noted
13 above. Additionally, the disclaimer on the mailer at issue in this matter states that it is paid for
14 by RRVF but the website address listed, www.reaganrepublicans.net, directs the reader to the
15 KCRR website.⁴ Compl., Ex. 1 (Attach. 1).

16 The Complaints allege that KCRR and the individual Respondents "working together . . .
17 spent over \$1,000 for a federal candidate without filing with the FEC" when they sent a mailer to
18 voters in Kootenai County that endorsed state candidates and a federal candidate. Compl. at 1.
19 The Complaints attach the mailer at issue, which states that "[the] Kootenai County Regan
20 Republicans wholeheartedly endorse the following conservative common-sense candidates in the

³ Ms. Gervais is also listed as KCRR's Vice President of Finance. See <http://www.reaganrepublicans.net/KCRRBoard.html>.

⁴ A website titled "The Idaho Federation of Reagan Republicans" includes a link to donate to RRVF. See <http://www.reaganrepublicans.info/>. Clicking on the section of this page for "Chapters" immediately redirects visitors to the KCRR website.

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1 May 15 [2012] Republican Primary." Compl., Ex. 1. The mailer lists 14 candidates for federal,
2 state, and local offices, and for each candidate includes the office sought, a photograph, and a
3 short statement about the candidate. The mailer includes one candidate for federal office,
4 Congressman Raul Labrador, the incumbent candidate for the U.S. House of Representatives
5 from Idaho's First Congressional District. *Id.* Several of the Respondents named in the
6 Complaints are listed as endorsed local candidates: Keith Hutcheson (Kootenai County Sheriff),
7 Barry McHugh (Kootenai County Prosecuting Attorney), Todd Tondea (Kootenai County
8 Commissioner District 1), and Dan Green (Kootenai County Commissioner District 3). *Id.* The
9 disclaimer at the bottom of the mailer states that it is "Proudly Paid for by the Reagan
10 Republican Victory Fund www.reaganrepublicans.net." *Id.*

11 KCRR submitted a Response — signed and sworn to by both Ron Lahr, as KCRR's
12 president, and Jeff Ward, as KCRR's treasurer — which includes information about both KCRR
13 and RRVF.⁵ See KCRR Resp. The KCRR Response explains that RRVF paid for the
14 endorsement mailer at issue and is identified in its disclaimer. KCRR Resp. ¶ 1. The Response
15 asserts that although KCRR issued the endorsements, it did not pay for or "add materially to" the
16 mailer and has and will not make any expenditures for federal candidates in 2012. *Id.* ¶ 2. The
17 KCRR Response identifies the Strategy Group, Inc. as the vendor that designed, printed, and
18 mailed a portion of the mailers and identifies Keith Hutcheson, Barry McHugh, Todd Tondee,
19 and Dan Green as candidates for Kootenai County offices who had no participation in the mailer
20 other than being listed as endorsed candidates.⁶ *Id.* ¶ 3-4.

⁵ RRVF was notified of the Complaints but did not submit a response.

⁶ The Idaho Secretary of State's website lists the Strategy Group, Inc. as a general business corporation with Ron Lahr as its registered agent. The Strategy Group, Inc. was notified of the Complaints but did not submit a response.

1 The KCRR Response contends that RRVF is not a political committee as defined in the
2 Act because it has not and will not spend over \$1,000 in connection with federal elections during
3 this calendar year, *Id.* ¶ 5. It asserts that Jeff Ward, who is also named as a Respondent,
4 contacted the Commission's Information Division to confirm that the federal share of the
5 expenditure for the mailer would be the single federal candidate's pro rata share of the total cost.
6 *Id.* ¶ 7-8. The KCRR Response explains that the total cost for the design, printing, and postage
7 of the mailer was \$7,517.26 as of May 5, 2012, making the federal candidate's pro rata share
8 \$587.26.⁷ KCRR states that because the federal share fell below the \$1,000 threshold for
9 reporting as a political committee, RRVF did not file any reports with the Commission and only
10 reported the expenditures to the Idaho Secretary of State. *Id.* ¶ 9-10.

11 Keith Hutcheson, Barry McHugh, Todd Tondee, and Dan Green each submitted
12 individual Responses. Hutcheson, a candidate for Kootenai County Sheriff, asserts that he was
13 asked to accept the endorsement of KCRR, was shown the mailer, and approved his picture and
14 what was written about him on the draft mailer. Hutcheson Resp. at 1. KCRR explained to him
15 that the mailer would be disseminated to the group's supporters in the county. *Id.* Hutcheson
16 claims that he reported an in-kind contribution to his campaign as required by state law, but
17 asserts that he and his campaign have not made contributions to any current federal or state
18 candidates. *Id.* Barry McHugh, a candidate for Kootenai County Prosecuting Attorney, asserts
19 that he did not have any involvement in designing the mailer and did not contribute funds
20 directly for the production of the mailer, although he may have contributed indirectly by paying a
21 KCRR membership fee and attending a fundraising dinner. McHugh Resp. at 1. He states that

⁷ The KCRR Response states that the pro rata share for the federal candidate is 1/13 of the total cost of the mailer because the mailer listed 13 endorsed candidates. KCRR Resp. ¶ 8. But the mailer attached to the Complaints endorses 14 candidates, one of whom is a federal candidate. Compl., Ex. 1. Accordingly, it appears that the pro rata share may be 1/14 of the total cost of the mailer, or \$536.95. This potential discrepancy is not material and does not affect our recommendations.

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1 he will disclose his share of the cost of the mailer as an in-kind contribution from KCRR. *Id.*
2 Todd Tondee, a candidate for Kootenai County Commissioner, asserts that while he is a member
3 of KCRR, he was not involved in the endorsements or the production of the mailer. Tondee
4 Resp. at 1. Dan Green, who was also a candidate for Kootenai County Commissioner, also
5 responded that he had no involvement in the mailer. E-mail from Dan Green to Jeff Jordan,
6 Supervising Attorney, FEC (Oct. 19, 2012, 12:52 EST).

7 **B. Analysis**

8 The Complaints generally allege that KCRR spent over \$1,000 for a federal candidate
9 without "filing with" the Commission. Compl. at 1.

10 **1. Political Committee Status**

11 Under the Act, groups that are political committees are required to register with the
12 Commission and publicly report all of their receipts and disbursements. 2 U.S.C. §§ 433, 434.
13 The Act defines a "political committee" as any committee, association, or other group of persons
14 that receives "contributions" or makes "expenditures" for the purpose of influencing a Federal
15 election which aggregate in excess of \$1,000 during a calendar year, 2 U.S.C. § 431(4)(A). The
16 term "contribution" is defined to include "any gift, subscription, loan, advance, or deposit of
17 money or anything of value made by any person for the purpose of influencing any election for
18 Federal office." 2 U.S.C. § 431(8)(A)(i). The term "expenditure" is defined to include "any
19 purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value,
20 made by any person for the purpose of influencing any election for Federal office." 2 U.S.C.
21 § 431(9)(A)(i). An organization will not be considered a "political committee" unless its "major
22 purpose is Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate)."
23 Political Committee Status, 72 Fed. Reg. 5595, 5597 (Feb. 7, 2007) (Supplemental Explanation

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1 and Justification). See *Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Massachusetts Citizens*
2 *for Life, Inc. ("MCFL")*, 479 U.S. 238, 262 (1986).

3 It does not appear that KCRR or RRVF met the statutory threshold for political
4 committee status by making \$1,000 in expenditures during the 2012 calendar year. According to
5 the KCRR Response, RRVF has not and will not spend over \$1,000 in connection with federal
6 elections in 2012, and KCRR has not and will not make any expenditures on behalf of federal
7 candidates in 2012. KCRR Resp. ¶¶ 2, 5. The Response is sworn, and we have no contrary
8 information.⁸

9 The federal share of the total cost of the mailer was at most \$587.26, and the Complaints
10 do not allege, nor did we identify any publicly available information showing, that RRVF made
11 additional expenditures or received any contributions. We examined RRVF's disclosure reports
12 filed with the Idaho Secretary of State but were unable to determine from them whether
13 disbursements or receipts reported therein are "contributions" or "expenditures" as defined under
14 the Act. See, e.g., [http://www.sos.idaho.gov/elect/Finance/2012/PrePrimary/Party/](http://www.sos.idaho.gov/elect/Finance/2012/PrePrimary/Party/ReaganRepublicansVictoryFund.pdf)
15 [ReaganRepublicansVictoryFund.pdf](http://www.sos.idaho.gov/elect/Finance/2012/PrePrimary/Party/ReaganRepublicansVictoryFund.pdf). Accordingly, there is no information that KCRR or RRVF
16 exceeded the \$1,000 statutory threshold for political committee status.

17 Moreover, it does not appear that RRVF or KCRR has as its major purpose federal
18 campaign activity. The only available information relating to the purpose of RRVF is found in
19 the Idaho state reports, and they do not provide evidence of the requisite major purpose.
20 Although the KCRR website includes information about its purpose and its activities, it also does
21 not provide any evidence that its major purpose was federal campaign activity. See
22 www.reaganrepublicans.net. The website advertises weekly meetings of the group at a local

⁸ Although the KCRR response is sworn to by Ward as Treasurer of KCRR, Ward is also RRVF's treasurer.

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1 restaurant that feature state and local officials. *Id.* Under the "Action" section of the website,
2 KCRR describes events including sign wavings, a town hall meeting to oppose universal
3 healthcare in Idaho, and appearances at parades. See [http://www.reaganrepublicans.net/](http://www.reaganrepublicans.net/ACTION.html)
4 [ACTION.html](http://www.reaganrepublicans.net/ACTION.html). The list of 2012 general election endorsements posted on KCRR's website does
5 not include any federal candidates. See <http://www.reaganrepublicans.net/Endorsements.html>.
6 While the "Our Mission" section of the website describes KCRR's goal as to support
7 Republicans candidates "at all levels," it appears that KCRR is focused on state and local
8 elections and legislative and policy issues. We do not have any additional information about
9 RRVF's activities.

10 Nor is there any evidence that any of the remaining Respondents have liability under
11 sections 433 and 434 of the Act. Accordingly, we recommend that the Commission find no
12 reason to believe that the Respondents violated 2 U.S.C. §§ 433 and 434 by failing to register
13 and report with the Commission as a political committee.

14 2. Independent Expenditure Reporting

15 Although there is no evidence that RRVF was required to register and report with the
16 Commission as a political committee, RRVF should have reported the cost of the federal share of
17 the mailer as an independent expenditure. The Act requires every person other than a political
18 committee who makes independent expenditures of over \$250 in a calendar year to file an
19 independent expenditure report.⁹ 2 U.S.C. § 434(c); 11 C.F.R. § 109.10(b). The Act defines an
20 independent expenditure as any expenditure that expressly advocates the election or defeat of a

⁹ 24-hour independent expenditure reporting is required for expenditures aggregating \$1,000 or more after the twentieth day but more than 24 hours before an election. 2 U.S.C. § 434(g); 11 C.F.R. § 109.10(d). The federal candidate's share of RRVF's expenditure was less than \$1,000, so 24-hour reporting was not required.

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1 clearly identified candidate and is not made in concert with a candidate, a political party
2 committee, or their respective agents. 2 U.S.C. § 431(17).

3 The mailer at issue is an independent expenditure that expressly advocates the election of
4 Congressman Labrador. See 2 U.S.C. § 431(17); 11 C.F.R. § 100.16. The mailer urges the
5 reader to "vote by mail or at the polls" and states that it "is very important that we vote to
6 nominate the strongest conservative Republican candidates" accompanied with a list of
7 "conservative common-sense candidates" endorsed by KCRR, including Labrador. See
8 11 C.F.R. § 100.22(a); *MCFL*, 479 U.S. at 249. There is no allegation that the mailer was
9 coordinated with Raul Labrador or his committee and KCRR's Response asserts that none of
10 RRVF's expenditures were coordinated with federal candidates. KCRR Resp. ¶ 6.

11 Thus, it appears that RRVF violated 2 U.S.C. § 434(c) by failing to report the federal
12 share of the expenditure for the mailer as an independent expenditure. Due to the small amount
13 in violation, however, we recommend that the Commission dismiss this violation as a matter of
14 prosecutorial discretion, with letter of caution to RRVF. See *Heckler v. Chaney*, 470 U.S. 821
15 (1985).

16 3. Disclaimer

17 Because RRVF's mailer expressly advocated the election of a federal candidate, there is
18 reason to believe that it was required to include an appropriate disclaimer. The Act requires all
19 public communications that expressly advocate the election or defeat of a clearly identified
20 candidate to contain disclaimers. 2 U.S.C. § 441d; 11 C.F.R. § 110.11(a)(2). The definition of
21 public communication includes a mass mailing, which is defined as 500 pieces of mail of an
22 identical or substantially similar nature within any 30-day period. 11 C.F.R. §§ 100.26; 100.27.
23 Communications that are not authorized by a candidate are required to clearly state the name and

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1 permanent street address, telephone number, or World Wide Web address of the person who paid
2 for the communications, and to state that the communications were not authorized by any
3 candidate or the candidate's committee. 2 U.S.C. § 441d(a)(3).

4 Although we do not have information regarding precisely how many mailers RRVF
5 distributed, given the total cost of \$7,517.26, it is likely that more than 500 mailers were
6 disseminated, thereby triggering the disclaimer requirement. The mailer's disclaimer states only
7 that it is "Proudly Paid for by the Reagan Republican Victory Fund
8 www.reaganrepublicans.net." Compl., Ex. 1. The disclaimer does not state that the
9 communication was not authorized by any candidate or candidate's committee. Accordingly, if
10 it were a mass mailing — and there is reason to believe that it was — RRVF violated 2 U.S.C.
11 § 441d by failing to include a complete disclaimer on the mailer. Nonetheless, considering that
12 RRVF included a partial disclaimer on its mailers, the mailer identified only one federal
13 candidate out of 14 candidates listed, and the small amount in violation, we recommend that the
14 Commission exercise its prosecutorial discretion to dismiss this alleged violation, with a letter of
15 caution to RRVF. See *Heckler v. Chaney*, 470 U.S. 821 (1985).

16 III. RECOMMENDATIONS

- 17 1. Find no reason to believe that the Kootenai County Reagan Republicans, the Reagan
18 Republican Victory Fund, the Strategery Group, Inc., Jeff Ward, Keith Hutcheson,
19 Barry McHugh, Todd Tondee, and Dan Green violated 2 U.S.C. §§ 433 and 434;
20
- 21 2. Dismiss, as a matter of prosecutorial discretion, any violations of 2 U.S.C. §§ 434(c)
22 and 441d by Reagan Republican Victory Fund and issue a letter of caution;
23
- 24 3. Approve the attached Factual and Legal Analyses;
25
- 26 4. Approve the appropriate letters; and,
27

5. Close the file.

Anthony Herman
General Counsel

10-22-12
Date

Kathleen M. Guith
Kathleen M. Guith
Deputy Associate General Counsel
for Enforcement

Kasey S. Morgenheim
Kasey S. Morgenheim
Attorney

Attachments:

1. RRVF Mailer

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VOTE

"I regard voting as the most sacred right of free men and women." Ronald Reagan

The Reagan Republicans are reminding you to vote by mail or at the polls on or before Primary Election Day May 15!

What's at Stake?

The election of 2012 will be one of the most important of our lifetimes. **The May 15 Primary** will determine who will carry the banner for the Republican Party in the November General Election. It is very important that we vote to nominate the **strongest conservative Republican candidates** to take on the Democrats in the fall. To fight against Obamacare, fiscal irresponsibility, liberal social policies, federal intrusion into our lives and the wholesale attack on our economic freedom and security, we must field a strong slate of **conservative, ethical and competent** candidates. Since 2000 the Kootenai County Reagan Republicans have been fighting to **uphold President Ronald Reagan's timeless principles** and helping to **elect conservative candidates in Idaho**. We need your help.

Who We Support

The Kootenai County Reagan Republicans wholeheartedly endorse the following **conservative common-sense candidates** in the May 15 Republican Primary. The Reagan Republicans recommend these outstanding candidates based on their **strong conservatism, their demonstrated competence, and their high ethical standards**.



United States Congress 1st District
Raul Labrador

Our effective conservative voice in the U.S. House of Representatives.



State Senate 4th District
John Goedde

The leader of conservative education reform in the Idaho Senate.



State Senate 2nd District
Steve Vick

A strong voice for North Idaho in the Idaho Senate.



State Representative 4th District A
Luke Malek

A conservative deputy prosecutor with a pro-freedom agenda.



State Representative 2nd District B
Ed Morse

Business leader who will bring ethics and commonsense conservative solutions.



State Representative 4th District B
Kathy Sims

A conservative leader fighting for urban renewal reform.



State Senate 3rd District
Bob Norini

Respected leader in the Idaho House now running for the Idaho Senate.



Kootenai Co. Commissioner District 1
Todd Tonboe

Hardworking, quiet, conservative, Commissioner who gets the job done.



State Representative 3rd District A
Jeff Tyler

Co-founder of the Reagan Republicans and a Reagan conservative.



Kootenai Co. Commissioner District 3
Dan Green

Former successful businessman bringing business principles to the county.



State Representative 3rd District B
Frank Henderson

A statesman and a tireless catalyst for economic development in North Idaho.



Kootenai County Sheriff
Keith Hutcheson

Former Police Chief and the only Republican candidate who is not a lawyer or a lobbyist.



Precinct 3 Committeeman
Lora Garvals

V.P. Kootenai County Reagan Republicans



Kootenai Co. Prosecuting Attorney
Barry McHugh

Highly qualified and the only candidate with any criminal prosecution experience.

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