

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR: 7536

DATE COMPLAINT FILED: Nov. 5, 2018
DATE OF NOTIFICATION: May 6, 2019
DATE OF LAST RESPONSE: July 24, 2019
DATE REACTIVATED: July 24, 2019

EXPIRATION OF SOL: Oct. 29, 2023
ELECTION CYCLE: 2018

COMPLAINANT:

Mitchell V. Harper

RESPONDENTS:

Coalition for a Safe Secure America

MUR: 7551

DATE COMPLAINT FILED: Nov. 26, 2018
DATES OF NOTIFICATION: May 6, 2019
Aug. 14, 2019
DATE OF LAST RESPONSE: Sept. 18, 2019
DATE REACTIVATED: July 24, 2019

EXPIRATION OF SOL: Oct. 27, 2023
ELECTION CYCLE: 2018

COMPLAINANT:

James R. Holden

RESPONDENTS:

Coalition for a Safe Secure America
Indiana Democratic Party

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30101(4)(A)
52 U.S.C. § 30101(17)
52 U.S.C. § 30101(22)
52 U.S.C. § 30101(23)
52 U.S.C. § 30104(c), (g)
52 U.S.C. § 30120(a)
11 C.F.R. § 100.16
11 C.F.R. § 100.22
11 C.F.R. § 100.26
11 C.F.R. § 100.27
11 C.F.R. § 104.4
11 C.F.R. § 109.10
11 C.F.R. § 110.11

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1 **INTERNAL REPORTS CHECKED:** FEC Disclosure Reports

2

3 **FEDERAL AGENCIES CHECKED:** None

4 **I. INTRODUCTION**

5 These matters involve allegations that Coalition for a Safe Secure America (“CSSA”), a
6 non-profit social welfare organization, paid for mailers attacking Mike Braun, a candidate for
7 U.S. Senate in Indiana, without including disclaimers as required by the Federal Election
8 Campaign Act of 1971, as amended (the “Act”). At the time that the Complaints in MURs 7536
9 and 7551 were filed with the Commission, it was unclear as to who was responsible for the
10 mailers. Based on information provided by the Complaints, we notified CSSA in MUR 7536
11 and MUR 7551 and the Indiana Democratic Party (“the Party”) in MUR 7551.¹ CSSA
12 acknowledged that it was responsible for all of the mailers.²

13 CSSA, however, denies that the mailers required disclaimers.³ CSSA first contends the
14 mailers were not independent expenditures because they do not contain express advocacy. It
15 further argues the mailers did not otherwise require disclaimers because: CSSA was not a

¹ The Amended Complaint in MUR 7536 alleged that the mailers contained similar content to a video advertisement on Facebook associated with the name “Coalition for a Safe Secure America – Indiana.” *See* Am. Compl. ¶ 12 (Nov. 5, 2018), MUR 7536 (“MUR 7536 Am. Compl.”). Therefore, we notified CSSA in MUR 7536 on May 6, 2019. The Complaint in MUR 7551 speculated that the Party was responsible for the mailers based on a comparison to a mailer distributed by the Party described in a Fox News article attached to that Complaint. *See* MUR 7551 Compl. at 1 (citing Kaitlyn Schallhorn, *Indiana Democrats Send Mailer Supporting Libertarian Senate Candidate*, FOXNEWS (Oct. 31, 2018) [hereinafter FoxNewsArticle], <https://www.foxnews.com/politics/indiana-democrats-send-mailer-supporting-libertarian-senate-candidate>). Therefore, we notified the Party in MUR 7551 on May 6, 2019. Based on CSSA’s admission that it was responsible for the mailers in MUR 7536, *see* Coalition for a Safe Secure America Resp. at 1 (July 24, 2019), MUR 7536 (“CSSA MUR 7536 Resp.”), we notified CSSA in MUR 7551 on August 14, 2019.

² Coalition for a Safe Secure America Resp. at 1 (July 24, 2019), MUR 7536 (“CSSA MUR 7536 Resp.”), The Party denies that it was responsible for the mailers. Indiana Democratic Party Resp. at 1 (May 21, 2019), MUR 7551 (“Party Resp.”).

³ CSSA MUR 7536 Resp. at 1; Coalition for a Safe Secure America Resp. at 1-2 (Sept. 18, 2019), MUR 7551 (“CSSA MUR 7551 Resp.”).

1 political committee; the mailers do not contain express advocacy or solicitations; and they are
2 not electioneering communications.

3 The available information indicates that all of CSSA's communications contain express
4 advocacy but none of them contained required disclaimers. We therefore recommend that the
5 Commission (1) find reason to believe that Coalition for a Safe Secure America violated
6 52 U.S.C. § 30104(c), (g)(1), and (g)(2) by failing to report independent expenditures; (2) find
7 reason to believe that Coalition for a Safe Secure America violated 52 U.S.C. § 30120(a) and
8 11 C.F.R. § 110.11(a) by failing to include proper disclaimers on public communications;
9 (3) find no reason to believe that the Indiana Democratic Party violated 52 U.S.C. § 30104 by
10 failing to report independent expenditures; and (4) find no reason to believe that the Indiana
11 Democratic Party violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(a) by failing to include
12 proper disclaimers on public communications. We also recommend the Commission authorize
13 the use of compulsory process.

14 **II. FACTUAL BACKGROUND**

15 CSSA represents that it was an organization established under section 501(c)(4) of the
16 Internal Revenue Code that was dissolved as of December 31, 2018.⁴ CSSA is not registered
17 with the Commission and did not report any expenditures to the Commission.⁵ In late October

⁴ See CSSA MUR 7536 Resp. at 1; CSSA MUR 7551 Resp. at 1. The IRS website contains a Form 990-N (e-Postcard) for CSSA for Tax Year 2017 (Jan. 1, 2017 through Jan. 31, 2017). See Tax Exempt Organization Search, IRS, <https://apps.irs.gov/app/eos/> (where "Search By" is "Organization Name" and "Search Term" is "Coalition for a Safe Secure America") (last visited Jan. 7, 2020).

⁵ An organization named "Coalition for a Safe America" is registered with the Commission, but it is unclear if it is related to CSSA. See FEC Form 1, Coalition for a Safe America Statement of Organization (Apr. 6, 2018), <https://docquery.fec.gov/cgi-bin/forms/C00675579/1217492/>. That organization filed a Statement of Organization six months before any of CSSA's public activity occurred, is registered at different addresses, disclosed \$0 in activity in 2018, and appears to still be registered with the Commission. For purposes of this Report, we assume this organization is unrelated to CSSA.

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1 and early November 2018, CSSA distributed four mailers that reference candidates in the 2018
2 election for U.S. Senate from Indiana but contain no disclaimers indicating that CSSA paid for
3 the communications.⁶ Three mailers reference both Republican candidate Mike Braun and
4 Libertarian candidate Lucy Brenton,⁷ and one mailer references only Braun.⁸

5 Mike Braun is a businessman, former school board member, and former Indiana state
6 representative.⁹ Lucy Brenton is an entrepreneur and business consultant who serves as the
7 secretary of the Hamilton County Libertarian Party.¹⁰ Neither candidate held elected public
8 office at the time of the election or during the time period during which CSSA distributed the
9 communications at issue.

10 The mailers generally criticize Braun and praise Brenton for their respective positions
11 and records on tax policy in Indiana.¹¹ They label Braun as “TAX HIKE MIKE,” the “TAX
12 HIKE KING,” and include images of Braun with a crown. They disparage Braun's record as an

⁶ See Compl. ¶¶ 3, 5-6 (Nov. 5, 2018), MUR 7536 (“MUR 7536 Compl.”); MUR 7536 Am. Compl. ¶¶ 3, 6-7; Compl. at 1 (Nov. 26, 2018), MUR 7551 (“MUR 7551 Compl.”); CSSA MUR 7536 Resp. at 1; CSSA MUR 7551 Resp. 1. Copies of the mailers are attached to this General Counsel's Report as Attachments 1-4. Each mailer attached hereto was included with the Complaints submitted in MUR 7536, MUR 7551, or both (as noted in each Attachment).

⁷ See Attachs. 1-2, 4.

⁸ See Attach. 3.

⁹ See *About, MIKE BRAUN FOR IND.* (Oct. 23, 2018, 8:55PM), <http://web.archive.org/web/20181023205510/https://www.mikebraunforindiana.com/about/> (“Mike has... served as a member of the local School Board and was elected as a State Representative in 2014.”). Braun resigned from the Indiana House of Representatives in late 2017 in advance of his run for U.S. Senate in 2018. See, e.g., Press Release, Ind. House of Representatives Republican Caucus, Braun Resigning from Indiana House of Representatives (Oct. 20, 2017, 4:00PM), <https://www.indianahouserepublicans.com/news/press-releases/braun-resigning-from-indiana-house-of-representatives/> (“I'll miss working alongside my fellow House members, but hope to continue serving Hoosiers in a different capacity in the future.”); Brandon Smith, *Braun to Resign State House Seat Amid U.S. Senate Run*, WYFI (Oct. 20, 2017), <https://www.wfyi.org/news/articles/braun-to-resign-state-house-seat-amid-us-senate-run>.

¹⁰ See *Who Is Lucy*, LUCY BRENTON FOR U.S. SENATE (Oct. 3, 2018, 5:59AM), <https://web.archive.org/web/20181003055951/http://www.lucyforsenate.com/who-is-lucy/>.

¹¹ See generally MUR 7536 Compl.; MUR 7536 Am. Compl; MUR 7551 Compl.; Attachs. 1-4.

1 Indiana state representative on tax policy: voting to raise taxes 45 times and supporting a \$5
 2 billion gas tax—the “LARGEST TAX INCREASE IN INDIANA HISTORY”—and other
 3 enumerated examples of tax increases.¹² Three of the mailers compare Brenton and Braun,
 4 praising Brenton’s opposition to tax hikes and the “Mike Braun tax hikes” in particular.¹³ All
 5 four mailers contain USPS bulk mail permits.¹⁴ All four mailers exhort the recipient to “CALL
 6 TAX HIKE MIKE” at his campaign’s phone number and “TELL HIM TO STOP RAISING
 7 OUR TAXES.”¹⁵ Two of the three mailers that reference Brenton further exhort the recipient to
 8 “Call Lucy Brenton” at her campaign’s phone number and “tell her to keep opposing new
 9 taxes.”¹⁶

10 In addition, CSSA appears to have posted a video advertisement on Facebook that
 11 contained similar language and graphics to the mailers above, using the name “Coalition for a

¹² See, e.g., Attach. 1 at 2 (enumerating taxes and fees Braun voted for); Attach. 2 at 2 (“TAX HIKE MIKE BRAUN SUPPORTED THE LARGEST TAX INCREASE IN INDIANA HISTORY.”)

¹³ See Attach. 1 at 2 (“Lucy Brenton strongly opposed the Mike Braun tax hikes.”); Attach. 2 at 2 (same); Attach. 4 at 2 (“Lucy Brenton is opposed to Mike Braun’s Gas Tax Hike, and the 45 other taxes he voted to support or impose.”).

¹⁴ Three mailers were sent under permit number 1885 from Milwaukee, WI, and one was sent under permit number 256 from St. Louis, MO. The District Business Mail Entry Offices of the U.S. Postal Service in Milwaukee, and St. Louis, identified the Marek Group as the holder of bulk mail permit number 1885 and James Mulligan as the holder of bulk mail permit number 256, respectively. Both permit holders appear to be commercial printing companies. See *About*, MAREK GROUP, <http://www.marekgroup.com/about/> (last visited Dec. 23, 2019); *About Us*, MULLIGAN, <https://www.weprint.com/about-us.asp> (last visited Dec. 23, 2019).

¹⁵ See Attach. 1 at 2 (directing reader to call Braun at (317) 732-8893); Attach. 2 at 2 (same); Attach. 3 at 2 (same); Attach. 4 at 2 (same). Compare with Mike Braun for Indiana, Facebook, <https://www.facebook.com/mikebraunforindiana/?tn=%2Cd%2CP-R&eid=ARA5QedCdgTXeZbj40CFA6tvLY0U3w-P2c0KfUT4kLDYOZd4sPcmbSPxi1ElvDDFAwroK6JTneHdCe> (last visited Dec. 23, 2019) (listing (317) 732-8893 as campaign phone number under “About”).

¹⁶ See Attach. 2 at 2 (directing reader to call Brenton at (317) 721-3676); Attach. 4 at 2 (same). Compare with LUCY BRENTON FOR U.S. SENATE (Nov. 6, 2018, 12:53PM), <https://web.archive.org/web/20181106125330/http://www.lucyforsenate.com/> (listing (317) 721-3676 as campaign phone number under “Contact Us”).

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1 Safe Secure America - Indiana” (CSSA-I).¹⁷ The video was one of four identical videos CSSA-I
2 spent \$21,193 to promote on the platform between October 30 and November 6, 2018, in which
3 the narrator states: “Tax Hike Mike Braun says he’s a conservative. So why did Mike Braun
4 vote to raise taxes and fees 45 times last year? And helped pass the largest tax hike in state
5 history? Tell Mike Braun no more tax hikes” over images and video of Braun. Accompanying
6 on-screen text directs the viewer to “Call Mike Braun,” and provides the same campaign phone
7 number as the mailers.¹⁸ The Facebook videos do not include any disclaimer within the ads
8 themselves but labels Facebook placed on them state that they were “Sponsored” and “Paid for
9 by” CSSA-I.”¹⁹

10 In its response, CSSA acknowledged responsibility for the mailers at issue in MUR
11 7536.²⁰ Because those mailers are also at issue in MUR 7551, we notified CSSA in MUR 7551,
12 and CSSA acknowledged responsibility for those mailers as well.²¹ The Indiana Democratic
13 Party denied any involvement with the mailers.²²

¹⁷ MUR 7536 Am. Compl. at 2. A copy of the Facebook video has been uploaded to the Commission’s Voting Ballot Matters folder and is available online through the Facebook Ad Library. *See* Coalition for a Safe Secure America-Indiana, FACEBOOK: AD LIBRARY, https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&impression_search_field=has_impressions_lifetime&q=Coalition%20for%20a%20Safe%20Secure%20America-%20Indiana&view_all_page_id=1317216951751840 (last visited Dec. 23, 2019) [hereinafter CSSA-I Ad Library Profile]. The available information suggests that CSSA and CSSA-I may be one in the same organization or at least closely related. The Facebook Ad Library Profile for CSSA-I appears to include a logo for CSSA.

¹⁸ *See* CSSA-I Ad Library Profile.

¹⁹ CSSA-I Ad Library Profile; *see* MUR 7536 Am. Compl. ¶ 12.

²⁰ *See* CSSA MUR 7536 Resp. at 1.

²¹ *See id.*; CSSA MUR 7551 Resp. at 1. CSSA’s Response in MUR 7551 incorporates its Response in MUR 7536 and makes essentially identical arguments.

²² Party Resp. at 1.

1 III. LEGAL ANALYSIS

2 A. CSSA Failed to Report Independent Expenditures

3 An “independent expenditure” is an expenditure by a person expressly advocating the
4 election or defeat of a clearly identified federal candidate that is not coordinated with a
5 candidate, a candidate’s authorized committee or their agents, or a political party committee or
6 its agents.²³ The Act requires political committees and persons other than political committees
7 to report their independent expenditures.²⁴ Persons other than political committees who make
8 independent expenditures aggregating more than \$250 in a calendar year must file reports of
9 independent expenditures.²⁵ Political committees and other persons that make or contract to
10 make independent expenditures after the 20th day, but more than 24 hours, before an election
11 must disclose the activity within 24 hours each time that the expenditures aggregate \$1,000 or
12 more.²⁶

²³ 52 U.S.C. § 30101(17); 11 C.F.R. § 100.16.

²⁴ *See generally* 52 U.S.C. § 30104. The Complaints do not allege that the entity sending the mailers or sponsoring the Facebook videos violated the Act by failing to register and report as a political committee. Furthermore, CSSA denies that it qualifies as a political committee in its Responses to the Complaints. *See* CSSA MUR 7536 Resp. at 1, 5; CSSA MUR 7551 Resp. at 1, 5. As described below, the record shows that CSSA satisfied the statutory threshold for becoming a political committee by making independent expenditures in excess of \$1,000. *See* 52 U.S.C. § 30101(4)(A). Notwithstanding the threshold for contributions and expenditures, an organization will be considered a political committee only if its “major purpose is Federal campaign activity (*i.e.* the nomination or election of a Federal candidate).” *See* Political Committee Status, 72 Fed. Reg. 5595, 5597 (Feb. 7, 2007); *accord Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986). Here, we lack sufficient information to determine whether CSSA’s major purpose is federal campaign activity because we do not have complete information on CSSA’s overall fundraising and spending for the relevant period. CSSA’s tax returns for 2018 are not yet available, and CSSA’s Responses provide no information regarding its finances. CSSA’s tax returns for 2017 reveal gross receipts not greater than \$50,000. *See* Form 990-N, 2017 Tax Return of Coalition for a Safe Secure America. Under these circumstances, we make no recommendation as to whether CSSA should have registered and reported as a political committee. If we discover any relevant information during the proposed investigation of CSSA’s failure to report its independent expenditures, we will make the appropriate recommendation.

²⁵ 52 U.S.C. § 30104(c)(1); *see also* 11 C.F.R. §§ 104.4, 109.10(b).

²⁶ 52 U.S.C. § 30104(g)(1); 11 C.F.R §§ 104.4(c), 109.10(d)

1 Under 11 C.F.R. § 100.22(a), a communication expressly advocates the election or defeat
2 of a clearly identified candidate when it uses certain phrases or uses campaign slogans or
3 individual words, “which in context can have no other reasonable meaning than to urge the
4 election or defeat of one or more clearly identified candidate(s).”²⁷ A communication may also
5 be express advocacy under section 100.22(b) if:

6 [w]hen taken as a whole and with limited reference to external events,
7 such as the proximity to the election, could only be interpreted by a
8 reasonable person as containing advocacy of the election or defeat of one
9 or more clearly identified candidate(s) because — (1) [t]he electoral
10 portion of the communication is unmistakable, unambiguous, and
11 suggestive of only one meaning; and (2) [r]easonable minds could not
12 differ as to whether it encourages actions to elect or defeat one or more
13 clearly identified candidate(s) or encourages some other kind of action.²⁸

14 Although the communications described above clearly identify at least one federal
15 candidate, none of CSSA’s communications contain the type of phrases or campaign slogans
16 considered to constitute express advocacy under 11 C.F.R. § 100.22(a).

17 However, the three mailers that identify both Braun and Brenton are express advocacy
18 under 11 C.F.R. § 100.22(b).²⁹ First, under the facts here, the comparison of two candidates is

²⁷ 11 C.F.R. § 100.22(a). The Commission explained that the phrases enumerated in 11 C.F.R. § 100.22(a), such as “Smith for Congress” and “Bill McKay in ‘94,” have no other reasonable meaning than to urge the election or defeat of a clearly identified candidate. *See* Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures, 60 Fed. Reg. 35,292, 35,294 (July 6, 1995) [hereinafter Express Advocacy E&J]; *see also* *Mass. Citizens for Life, Inc.*, 479 U.S. at 249 (a communication is express advocacy when “it provides, in effect, an explicit directive” to vote for the named candidates).

²⁸ 11 C.F.R. § 100.22(b).

²⁹ *See* Attach. 1 (attached to both MUR 7536 and MUR 7551 Complaints); Attach. 2 (same); Attach. 4 (attached to MUR 7551 Complaint). We do not conclude that the mailer solely referencing Braun, *see* Attach. 3 (attached to MUR 7551), and the Facebook video, *see* CSSA-I Ad Library Profile, contain express advocacy under 11 C.F.R. § 100.22(b). Although those communications attack Braun for his record on taxation, without the comparison of two competing candidates we are unable to conclude the communications contain an “unambiguous” electoral portion. *See* 11 C.F.R. § 100.22(b); *cf.* Factual & Legal Analysis at 5-6 (“F&LA”), MUR 5854 (The Lantern Project) (finding no express advocacy where “the overwhelming focus of the communication is on issues and [the officeholder’s] policies or positions on those issues” and the communications “lack... any electoral directives”).

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1 an unmistakable and unambiguous electoral portion. Although none of the three mailers
 2 explicitly references the election of Braun's or Brenton's candidacies, and all three address the
 3 issue of taxation, the mailers directly contrast two competing candidates – Brenton's positions
 4 against Braun's voting record – neither of whom are current office holders, a week before an
 5 impending election for U.S. Senate.³⁰

6 Second, reasonable minds could not differ that these mailers encourage the defeat of
 7 Braun and election of Brenton. The Commission has determined that “[c]ommunications
 8 discussing or commenting on a candidate's character, qualifications, or accomplishments are
 9 considered express advocacy under . . . section 100.22(b) if, in context, they have no other
 10 reasonable meaning than to encourage actions to elect or defeat the candidate in question.”³¹
 11 Here, the mailers disparage Braun—displaying a caricature of him wearing a crown and calling
 12 him “THE TAX HIKE KING OF INDIANA”—and praise Brenton for opposing tax increases.³²
 13 The mailers' exhortations to “CALL TAX HIKE MIKE” and “TELL HIM TO STOP RAISING
 14 OUR TAXES” are non sequiturs, given that Braun is not an office holder and has no ability to
 15 raise taxes unless he is elected to office.³³ The mailers only refer to Braun's past votes on tax

³⁰ Cf. *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 470 (2007) (determining that indicia of functional express advocacy included “mention[ing] an election, candidacy, political party, or *challenger*,” and “tak[ing] a position on a candidate's character, qualifications, or fitness for office”) (emphasis added); see also *FEC v. Cent. Long Island Tax Reform Immediately Comm.*, 616 F.2d 45, 49 (2d Cir. 1980) (noting that an advertisement “did not refer to any federal election, to [a Congressman's] political affiliation or candidacy, or to *any electoral opponent* of the Congressman” in ultimately concluding the advertisement did not contain express advocacy) (emphasis added). In MUR 5854, the Commission found several advertisements did not constitute express advocacy where they lacked an unambiguous electoral portion or electoral directive, in part because they “never mention[ed the candidate's] candidacy or his *political opponent*.” F&LA at 5-6, MUR 5854 (The Lantern Project) (emphasis added).

³¹ Express Advocacy E&J, *supra* note 27, at 35,295.

³² Attach. 4 at 1-2; see also Attach. 1 at 2; Attach. 2 at 2.

³³ In the past, when the Commission has concluded “call” and “tell” exhortations did not constitute express advocacy, the target of the advertisement was an elected official with the ability to effectuate the encouraged policy action. See, e.g., F&LA at 5-6, MUR 6311 (Americans for Prosperity) (finding no reason to believe where ad's exhortation “Tell [a Congressperson we] won't forget” followed by a phone number “could be interpreted as a

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1 increases and do not address any upcoming legislation. Moreover, the Complaints state the
2 mailers were received between October 27 and November 3, 2018—approximately a week
3 before the election.³⁴ Accordingly, these mailers, in context, unambiguously encourage actions
4 to defeat Braun and elect Brenton and qualify as express advocacy under section 100.22(b).

5 While the record is incomplete regarding the amount that CSSA spent on the mailers, it
6 appears likely that its expenditures exceeded \$250. The mailers in question appear
7 professionally produced and were mailed using a USPS permit imprint. Therefore, we
8 recommend that the Commission find reason to believe that Coalition for a Safe Secure America
9 violated 52 U.S.C. § 30104(c) by failing to report independent expenditures. Further, given the
10 timing of the mailers, we recommend that the Commission find reason to believe that CSSA
11 violated 52 U.S.C. § 30104(g)(1) and (2) and 11 C.F.R. §§ 104.4(c) and 109.10(c) and (d).

12 **B. CSSA's Communications Lacked Required Disclaimers**

13 The Act requires disclaimers on all public communications made by a political
14 committee and any public communication that expressly advocates the election or defeat of a
15 clearly identified federal candidate or solicit contributions.³⁵ “Public communications” include
16 “mass mailings,” which are mailings of more than 500 pieces of mail of an identical or
17 substantially similar nature within any 30-day period,” and “any other form of general public

request to call and express disapproval of the vote”); Advisory Op. 2012-11 (Free Speech) (finding no express advocacy where an ad encouraged viewers to “call” an incumbent president to voice disapproval of his tax policy); *cf.* F&LA at 13, MUR 6538R (Americans for Job Security, *et al.*) (explaining in a major-purpose analysis that statements regarding individuals’ position on issues “have no nexus with the legislative process” where none of the ad targets were “federal officeholder[s] when the ads ran and thus [were] in no position to affect the federal political activities, issues or programs mentioned in the ads”).

³⁴ MUR 7536 Compl. ¶ 3; MUR 7536 Am. Compl. ¶¶ 3-4; MUR 7551 Compl. at 1; *see also* 11 C.F.R. § 100.22(b) (listing “proximity to the election” as an “external event” to consider in interpreting a communication’s meaning); *FEC v. Furgatch*, 807 F.2d 857, 865 (9th Cir. 1987) (listing, amongst other factors, “[t]iming the appearance of the advertisement less than a week before the election left no doubt of the action proposed”).

³⁵ 52 U.S.C. § 30120(a)(2); 11 C.F.R. § 110.11(a)-(c).

1 political advertising.”³⁶ The term general public political advertising “shall not include
2 communications over the Internet, except for communications placed for a fee on another
3 person’s Web site.”³⁷

4 The mailers at issue in these matters constitute public communications. All three
5 relevant mailers appear professionally produced, were likely distributed in quantities exceeding
6 500 units, contained a USPS permit imprint, and CSSA does not deny they were public
7 communications.³⁸ As explained above, it appears that the three mailers that compare Braun and
8 Brenton contain express advocacy and therefore required disclaimers.³⁹

9 Where required, disclaimers must be “presented in a clear and conspicuous manner, to
10 give the reader, observer, or listener adequate notice of the identity of the person or political
11 committee that paid for, and where required, that authorized the communication.”⁴⁰ If a
12 communication is paid for by a person or entity other than a candidate’s authorized committee,
13 but authorized by a candidate, the candidate’s authorized committee, or an agent of either, the
14 communication must clearly state that it has been paid for by such other persons and authorized
15 by the candidate’s authorized political committee.⁴¹ If a communication is not authorized by
16 candidate’s authorized committee, it must clearly state the name and permanent address,

³⁶ 52 U.S.C. § 30101(22), (23); 11 C.F.R. §§ 100.26, 100.27.

³⁷ 11 C.F.R. § 100.26.

³⁸ CSSA states in both Responses that its mailings “did not fall within any category of public communications under FEC regulations that required it to include a disclaimer,” tacitly acknowledging the mailers were public communications. *See* CSSA MUR 7536 Resp. at 5; CSSA MUR 7551 Resp. at 6.

³⁹ *See* 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a)(2); *see also supra* Section III.A.

⁴⁰ 11 C.F.R. § 110.11(c). For printed communications, disclaimers must be clear and conspicuous, be of sufficient type size to be clearly readable, be contained in a printed box set apart from the other contents of the communication, and must clearly state who paid for the communication. *Id.* § 110.11(c)(2).

⁴¹ *Id.* § 110.11(b)(2).

1 telephone number or website address of the person who paid for the communication and state
2 that the communication is not authorized by any candidate or candidate's committee.⁴²

3 All three relevant mailers lack disclaimers.⁴³ The record does not contain information to
4 indicate that any candidate or candidate's authorized committee authorized CSSA's
5 communications. Thus, the mailers fail to state that CSSA paid for the mailers, provide CSSA's
6 address, telephone number, or website, and state that the mailers were not authorized by any
7 candidate or candidate's committee. We therefore recommend the Commission find reason to
8 believe that Coalition for a Safe Secure America violated 52 U.S.C. § 30120(a) and 11 C.F.R.
9 § 110.11(a) by failing to include proper disclaimers on public communications.

10 **C. There Is No Reason to Believe That the Indiana Democratic Party Violated**
11 **the Act**

12 The Complaint in MUR 7551 alleges that the Party may have been responsible for the
13 mailers.⁴⁴ However, the available information indicates that the Party was not responsible for
14 any of the mailers at issue in these matters given that CSSA admits it was responsible for the
15 mailers.⁴⁵ Therefore, we recommend the Commission (1) find no reason to believe the Indiana
16 Democratic Party violated 52 U.S.C. § 30104 and 11 C.F.R. §§ 104.4 and 109.10 by failing to
17 report independent expenditures, and (2) find no reason to believe the Indiana Democratic Party
18 violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(a) by failing to include proper disclaimers
19 on public communications.

⁴² *Id.* § 110.11(b)(3).

⁴³ *See* Attachs. 1-4.

⁴⁴ MUR 7551 Compl. at 1.

⁴⁵ *See* CSSA MUR 7536 Resp. at 1; CSSA MUR 7551 Resp. at 1-2.

1 **IV. PROPOSED INVESTIGATION**

2 The investigation will focus on determining the timing and amount in violation of
3 CSSA's independent expenditures that were not reported and will seek information concerning
4 the appropriate disclaimer required for those expenditures. We therefore intend to ask CSSA to
5 provide information and documentation regarding the costs and circumstances of its
6 expenditures on its communications that compare Braun and Brenton. Although we plan to
7 utilize informal investigative methods, we recommend that the Commission authorize the use of
8 compulsory process, as necessary.

9 **V. RECOMMENDATIONS**

- 10 1. Find reason to believe that Coalition for a Safe Secure America violated 52 U.S.C.
11 § 30104(c), (g)(1), and (g)(2) by failing to report independent expenditures;
12
13 2. Find reason to believe that Coalition for a Safe Secure America violated 52 U.S.C.
14 § 30120(a) and 11 C.F.R. § 110.11(a) by failing to include proper disclaimers on
15 public communications;
16
17 3. Find no reason to believe that the Indiana Democratic Party violated 52 U.S.C.
18 § 30104 by failing to report independent expenditures;
19
20 4. Find no reason to believe that the Indiana Democratic Party violated 52 U.S.C.
21 § 30120(a) and 11 C.F.R. § 110.11(a) by failing to include proper disclaimers on
22 public communications;
23
24 5. Approve the attached Factual and Legal Analyses;
25
26 6. Authorize the use of compulsory process; and
27
28 7. Approve the appropriate letters.

30 Lisa J. Stevenson
31 Acting General Counsel

33 Charles Kitcher
34 Acting Associate General Counsel for Enforcement
35
36

MURs 7536 and 7551 (Coalition for a Safe Secure America, *et al.*)

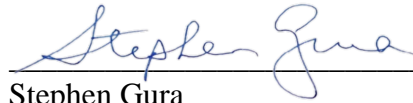
First General Counsel's Report

Page 14 of 14

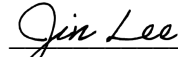
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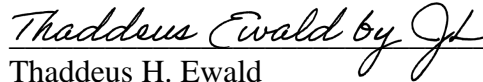
Date



Stephen Gura
Deputy Associate General Counsel
for Enforcement



Jin Lee
Acting Assistant General Counsel

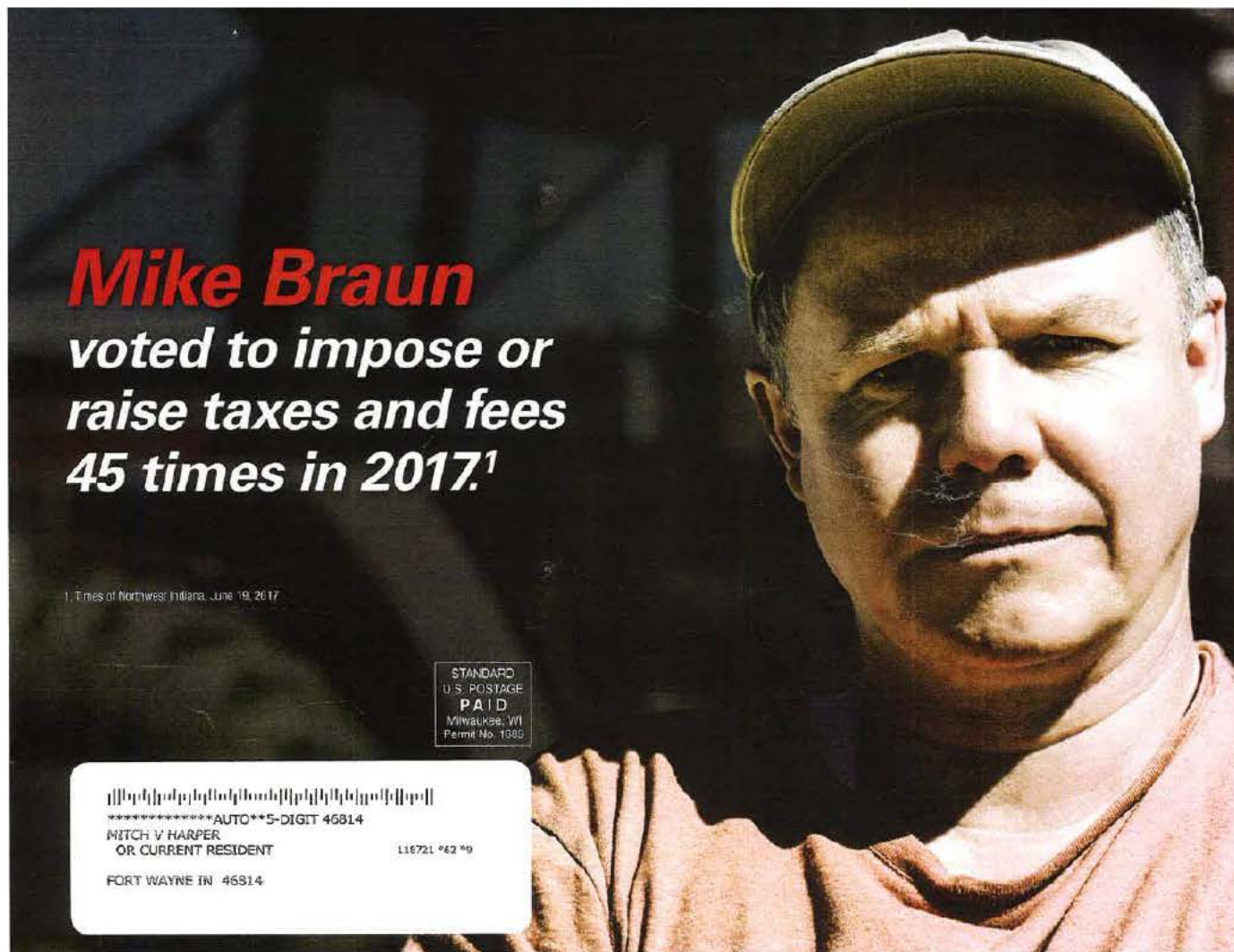


Thaddeus H. Ewald
Attorney

Attachments:

1. Mailer #1
2. Mailer #2
3. Mailer #3
4. Mailer #4

Mailer #1 Front¹



¹ Compl. ¶¶ 3-5, 7, MUR 7536 (Nov. 5, 2018); Compl. at 1, 3-4, MUR 7551 (Nov. 26, 2018).

Mailer #1 Back


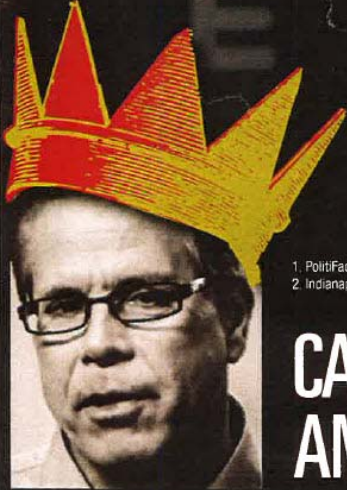
MIKE BRAUN: THE TAX HIKE KING OF INDIANA

Mike Braun voted to raise taxes and fees on:

- Gas for your car
- Car registration fees
- Airplane fuel
- Teachers' background checks
- Immunizations for students

Mike Braun even supported the largest tax increase in Indiana history – the gas tax, which went up by a whopping 55 percent and will take \$5 BILLION out of taxpayers' pockets in the first seven years.¹

1. PolitiFact: April 30, 2018
2. Indianapolis Star: September 14, 2018



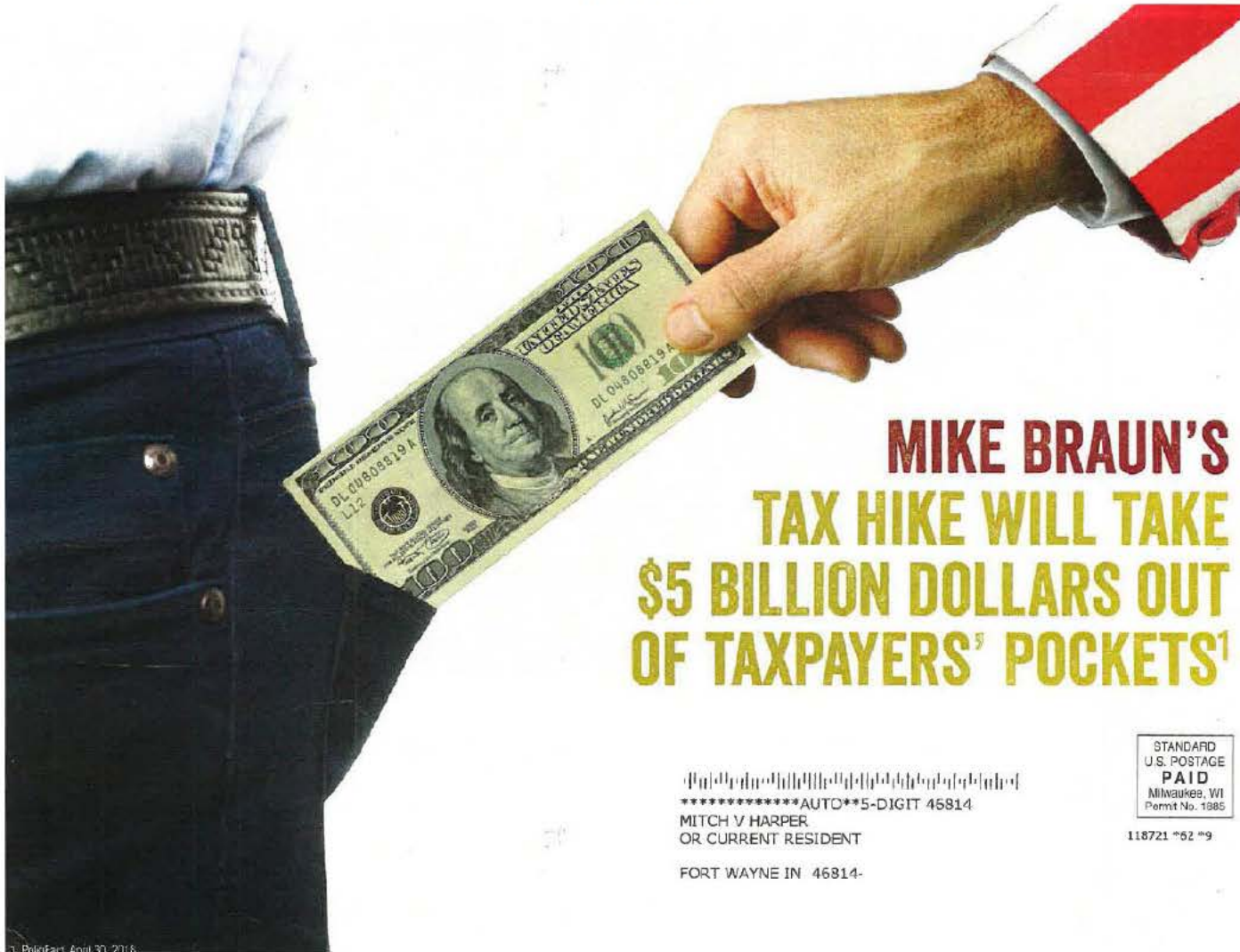
Lucy BRENTON

Opposed to Tax Hikes

Lucy Brenton strongly opposed the Mike Braun tax hikes. In fact, she has always opposed all taxes that take money from us to line the government's pockets.²

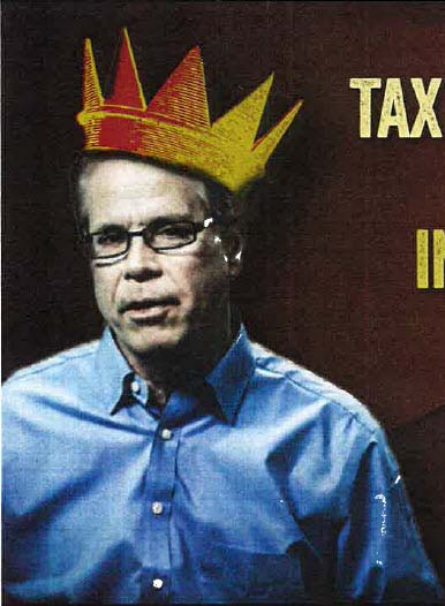
**CALL TAX HIKE MIKE AT (317) 732-8893
AND TELL HIM TO STOP RAISING OUR TAXES.**

Mailer #2 Front¹



¹ Am. Compl. ¶¶ 4-6, 8, MUR 7536 (Nov. 5, 2018); Compl. at 1, 5-6, MUR 7551 (Nov. 26, 2018).

Mailer #2 Back



**TAX HIKE MIKE BRAUN SUPPORTED
THE LARGEST TAX INCREASE
IN INDIANA HISTORY.**

Mike Braun raised the taxes we pay on gas by a whopping 55% – the largest tax hike in Indiana’s history.¹ Thanks to Tax Hike Mike, this will cost us \$5 billion in the first seven years.

Mike Braun voted to impose or raise taxes and fees 45 times in 2017 alone.² Hoosiers are paying more for all sorts of things, from car registration fees to immunizations for students. Even our teachers must pay more for their own required background checks.

CALL TAX HIKE MIKE AT (317) 732-8893 AND TELL HIM TO STOP RAISING OUR TAXES.



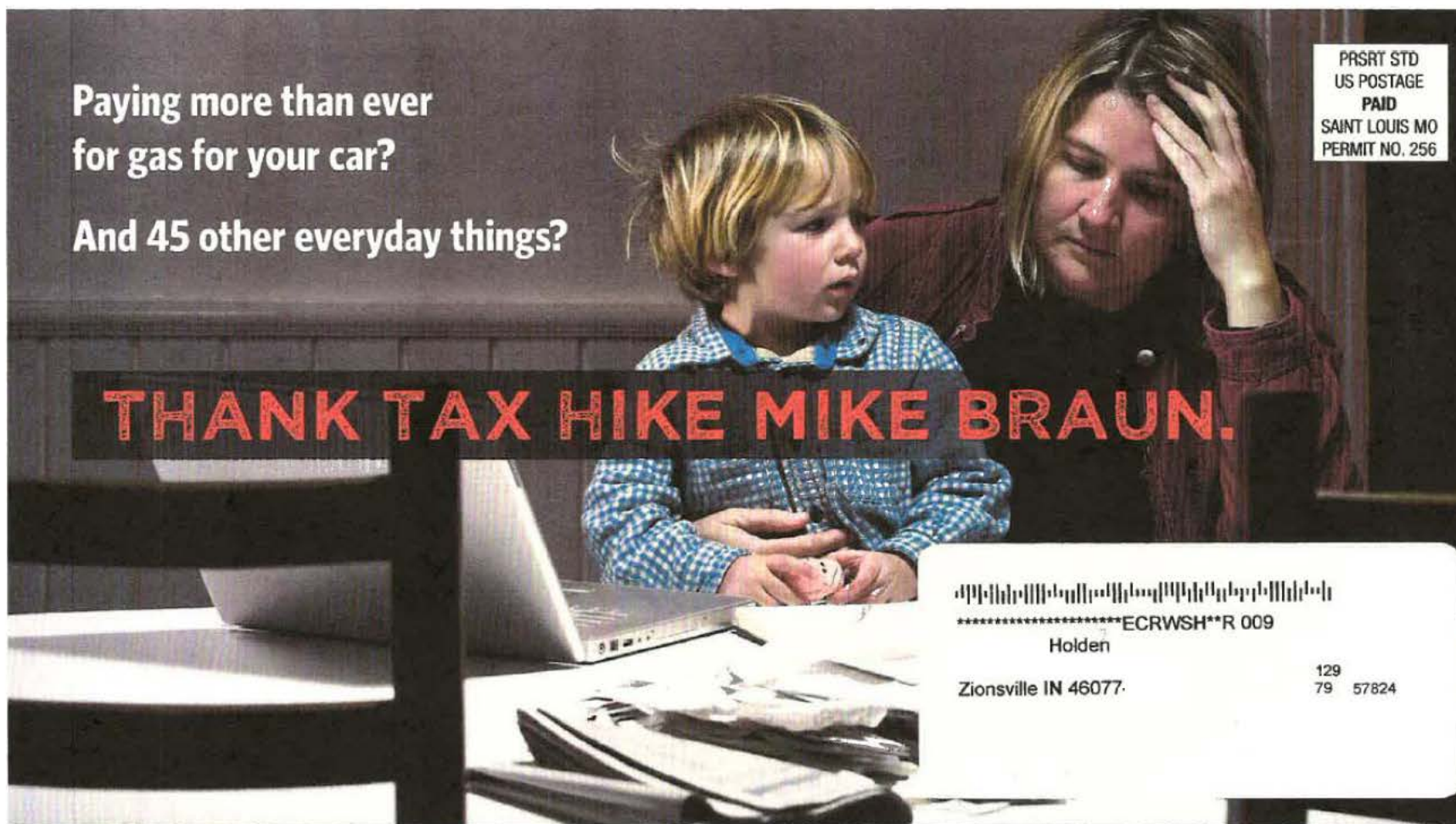
Lucy Brenton: Opposed to all tax increases

Lucy Brenton strongly opposed the Mike Braun tax hikes.
In fact, she opposes all taxes that take money from our pockets.³

Call Lucy Brenton at (317) 721-3676 and tell her to keep opposing new taxes.

1. Politifact, April 30, 2018. 2. Times of Northwest Indiana, June 19, 2017. 3. Indianapolis Star, September 14, 2018.

Mailer #3 Front¹



¹ Compl. at 1, 7-8, MUR 7551 (Nov. 26, 2018).

Mailer #3 Back

Mike Braun's Tax Hike on our gas will take **\$5 BILLION** out of taxpayers' pockets.¹



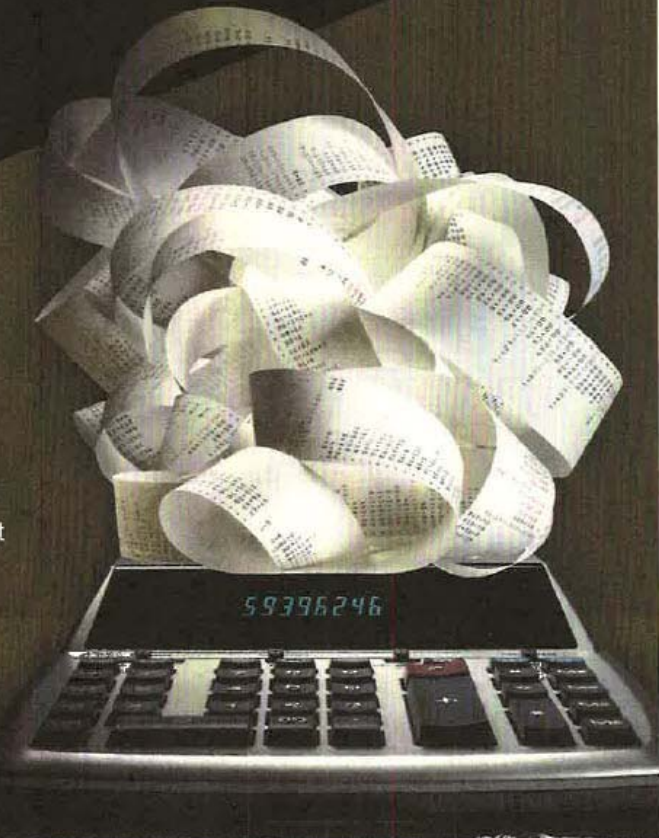
Mike Braun raised the taxes we pay on gas by a whopping 55%—the largest tax hike in Indiana's history.¹ But that's not all. He also raised or imposed taxes or fees on:

- Gas for your car
- Car registration fees
- Airplane fuel
- Teachers' background checks
- Immunizations for students²

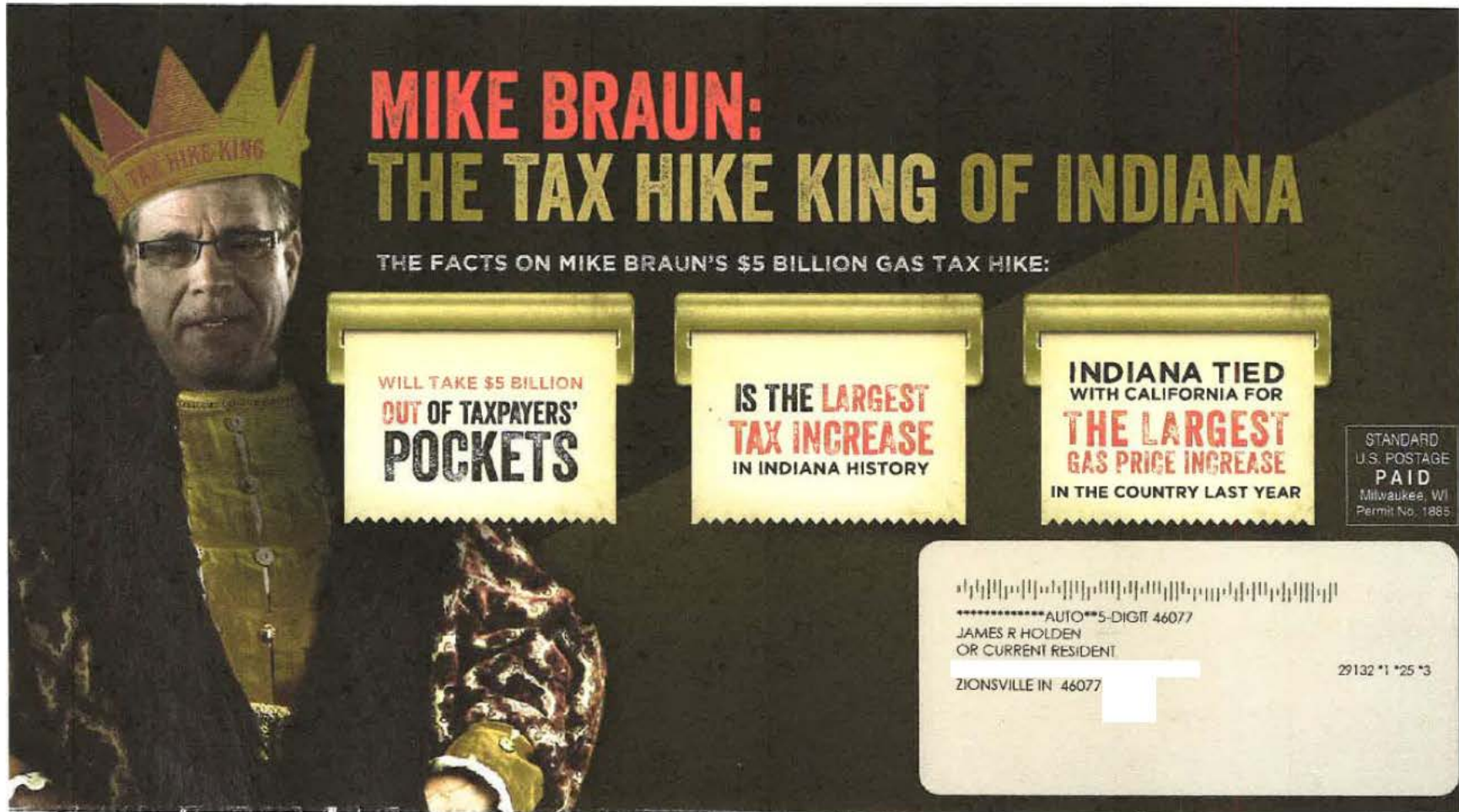
Thanks to Tax Hike Mike, the gas tax alone will cost us \$5 billion in the first seven years.

**CALL TAX HIKE MIKE AT (317) 732-8893 AND
TELL HIM TO STOP RAISING OUR TAXES.**

1. PolitiFact, April 30, 2018. 2. Times of Northwest Indiana, June 19, 2017.



Mailer #4 Front¹



¹ Compl. at 1, 9-10, MUR 7551 (Nov. 26, 2018).

Mailer #4 Back

TAXPAYERS ARE OUT \$5 BILLION

THANKS TO TAX HIKE MIKE

Mike Braun's Gas Tax Hike – the largest tax increase in Indiana's history – will take \$5 billion from taxpayer pockets over the next seven years.¹ And the gas tax isn't the only tax or fee he voted to raise or impose.

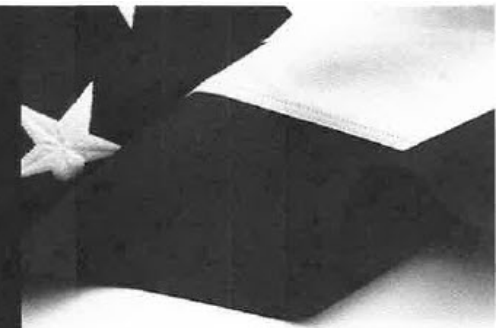
**CALL TAX HIKE MIKE AT (317) 732-8893
AND TELL HIM TO STOP RAISING OUR TAXES.**

1. PrintFact, April 30, 2018. 2. Times of Northwest Indiana, June 19, 2017. 3. Indianapolis Star, September 14, 2018.



THANKS TO TAX HIKE MIKE,
HOOSIERS ARE HAVING TO
PAY MORE FOR:

- GAS for your car
- Car registration FEES
- Airplane FUEL
- IMMUNIZATIONS
-and 41 other things.²



Lucy BRENTON: OPPOSED TO TAKING MORE MONEY FROM TAXPAYER POCKETS



Lucy Brenton is opposed to Mike Braun's Gas Tax Hike, and the 45 other taxes he voted to support or impose. In fact, she opposes all taxes that take money from taxpayers to line the government's pockets.³

Call Lucy Brenton at (317) 721-3676 and tell her to keep opposing new taxes.