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BEFORE THE
FEDERAL ELECTION COMMISSION

OFFICE OF GENERAL
COUNSEL

Indiana Democratic Party
John C. Zody, Chair
115 W. Washington St., Suite 1165
Indianapolis, IN 46204

Complainant

MUR # 7095

v.

RGA Right Direction PAC
1747 Pennsylvania Avenue, NW Suite 250
Washington, DC 20006

Michael Adams, Treasurer
RGA Right Direction PAC
1747 Pennsylvania Avenue, NW Suite 250
Washington, DC 20006

Respondents

COMPLAINT

Complainant files this complaint under 52 U.S.C. § 30109(a)(1) against the RGA Right Direction PAC and Michael Adams, Treasurer of RGA Right Direction PAC, in his official capacity (collectively, "Respondents"), requesting that the Federal Election Commission ("FEC" or "Commission") investigate violations of the Federal Election Campaign Act of 1971, as amended (the "Act") and Federal Election Commission ("FEC" or "Commission") regulations. Specifically, RGA Right Direction PAC has repeatedly failed to comply with the Commission's written disclaimer requirements for television advertisements. We ask that the Commission immediately investigate and levy appropriate sanctions on Respondents if it determines that they failed to comply with the Act.

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A. FACTS

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RGA Right Direction PAC is an independent expenditure-only committee registered with the FEC.¹ Michael Adams serves as its treasurer.² Based on publicly available FCC political file reports,³ RGA Right Direction PAC began airing at least two television advertisements in Indiana in June 2016 opposing John Gregg, a candidate for Governor of Indiana.⁴ The advertisements were not authorized by any federal candidate or candidate's authorized committee. The first advertisement to air, "Twins," contains the following audio and written disclaimer:

Audio: "RGA Right Direction PAC is responsible for the content of this advertising."

Written: "PAID FOR BY RGA RIGHT DIRECTION PAC, 202-662-4162 AND NOT AUTHORIZED BY ANY FEDERAL CANDIDATE OR CANDIDATE'S COMMITTEE"

The second advertisement, "Facts," contains the same audio disclaimer as "Twins," and substantially the same written disclaimer:

Written: "PAID FOR BY RGA RIGHT DIRECTION PAC, 202-662-4162 AND NOT AUTHORIZED BY ANY CANDIDATE OR CANDIDATE'S COMMITTEE"

¹ See FEC Form 1, Statement of Organization, RGA Right Direction PAC (June 8, 2012), <http://docquery.fec.gov/pdf/939/12971260939/12971260939.pdf>.

² *Id.*

³ See, e.g. WANE-TV Fort Wayne, IN, 2016 Political File, Non-candidate Issue Ads, RGA Right Direction Contract # 873774 (June 7, 2016) <https://publicfiles.fcc.gov/tv-profile/wane-tv/political-files/2016/non-candidate-issue-ads/a19e3168-c03c-aedd-dee4-66e93eec5878/>; WISH-TV Indianapolis, IN, 2016 Political File, Non-candidate Issue Ads, RGA Right Direction PAC, Contract # 873808, (June 7, 2016) <https://publicfiles.fcc.gov/tv-profile/wish-tv/political-files/2016/non-candidate-issue-ads/rga-right-direction-pac/234e640b-469d-cda8-dac2-fdd4550b1e9d/>.

⁴ See Republican Governors Association, "Facts" (June. 6, 2016), https://youtu.be/G0Tp_kM_3xI; Republican Governors Association, "Twins" (June 20, 2016), <https://youtu.be/fPRim6SRNtM>.

However, neither advertisement includes a written disclaimer providing that RGA Right Direction PAC is responsible for the content of the advertisements.

B. LEGAL ARGUMENT

Whenever a political committee sponsors a television advertisement or other public communication, as defined by Commission regulations, the ad must carry disclaimers, regardless of the content of the ad.⁵ If the communication is not authorized by a federal candidate, an authorized political committee of a federal candidate, or its agents, it must clearly state the name and permanent street address, telephone number, or World Wide Web address of the committee and state that the communication is not authorized by any candidate or candidate's committee.⁶ Public communications not authorized by any candidate or committee that are transmitted by television must also include, in addition to the above disclaimer, both spoken *and* written statements that "[Committee] is responsible for the content of this advertising."⁷ The on-screen statement must appear in a clearly readable manner for a period of at least four seconds at the end of the advertisement.⁸ While the Commission has recognized exceptions to the disclaimer requirements when, for example, inclusion of a disclaimer would be impractical, such as for skywriting, water towers, or clothing apparel, it has not recognize any relevant exceptions for television advertisements.⁹

Respondents' failure to include this written disclaimer is a plain and clear violation of the Act, and their puzzling decision to partially comply by including only the spoken statement

⁵ 52 U.S.C.A. § 30120(a); 11 CFR 110.11(a)(1); *id.* § 100.26 (defining public communication).

⁶ 52 U.S.C.A. § 30120(a)(3); 11 C.F.R. § 110.11(a)(3).

⁷ 52 U.S.C.A. § 30120(d)(2); 11 C.F.R. § 110.11(c)(4)(i), (iii).

⁸ 52 U.S.C.A. § 30120(d)(2); 11 C.F.R. § 110.11(c)(4)(iii).

⁹ 11 C.F.R. § 110.11(f)(1); *see also* FEC Adv. Op. 2007-33 (upholding "stand-by-your-ad" disclaimer requirement for television advertisements and concluding that ten- and fifteen-second television advertisements do not qualify for the "small items" exception at 11 CFR 110.11(f)(i)).

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demonstrates that Respondents were aware of the disclaimer requirement and understood that it applied to the advertisements at issue. Committees may not simply choose to comply with some disclaimer requirements but not others when sponsoring television advertisements.

The advertisements' non-federal content does not excuse them from including the required disclaimers. As noted above and as clearly stated in the law, the disclaimer requirements apply to *any* public communication sponsored by a political committee, regardless of content.¹⁰ Indiana campaign finance law provides an advantage to federally registered committees by exempting them from certain periodic reporting requirements.¹¹ However, Respondents cannot reap the benefits of operating through a federal committee in Indiana without also subjecting themselves to the concomitant obligations under federal law. For whatever reason, Respondents chose to engage in Indiana electoral activity through RGA Right Direction PAC rather than establishing an Indiana committee, and as a result they must be held accountable for their knowing and willful failure to comply with the basic federal disclaimer requirements that apply to their television advertisements.

C. REQUESTED ACTION

As shown, the facts indicate that Respondents have violated the Act and Commission regulations by failing to include the required disclaimers on television advertisements aired in Indiana. We respectfully request that the Commission investigate this violation, and that Respondents be enjoined from further violations and be fined the maximum amount permitted by law.

¹⁰ See Explanation and Justification for Regulations on Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, 67 Fed. Reg. 76,962, 76,964 (Dec. 13, 2002) ("In BCRA, Congress provided that 'any communication' for which a political committee makes a disbursement must include a disclaimer, expanding the scope of the disclaimer requirement for political committees beyond communications constituting express advocacy and communications soliciting contributions.")

¹¹ See Ind. Code Ann. § 3-9-2-4.

Sincerely,

John C. Zdy

SUBSCRIBED AND SWORN to before me this 28 day of June, 2016

Angela M. Nussmeier
Notary Public IEO co-director

My Commission Expires:

n/a

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