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FEDERAL ELECTION COMMISSION

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August 29, 2016

Federal Election Commission
Office of Complaints Examination & Legal Administration
Attn: Mr. Jeff S. Jordan
999 E Street, N.W.
Washington, DC 20463

Re: MUR 7095 (*RGA Right Direction PAC*)

Dear Mr. Jordan:

RGA Right Direction PAC (*RDP*) and Michael Adams, in his official capacity as treasurer, through counsel, hereby respond to the complaint received in this matter.

You stated in your letter to the above-named respondents that the complaint indicates that *RDP* and its treasurer may have violated the Federal Election Campaign Act, as amended (the Act). For sure, a scant surface view might yield that initial conclusion, but a deeper scrutiny will not.¹

Complainant alleges that *RDP* broadcast two television advertisements opposing the election of an Indiana gubernatorial candidate (while no other candidate was mentioned), which failed to include the written responsibility disclaimer for television advertisements -- "XXX is responsible for the content of this advertising" -- required by 11 C.F.R. § 110.11(c)(4)(iii). Complainant states, however, that the audio responsibility disclaimer was included per subsection (c)(4)(i).

Certainly, *RDP* is a federal "political committee" that made a "public communication" and thus it appears at first glance that *RDP* should have complied with the disclaimer

¹ Not even a deeper scrutiny is necessary. The undersigned made an anonymous call to the FEC's Information Division on July 14, 2016 at 10:47 am on the question at issue in this matter and was told without hesitation that the Commission's disclaimer requirements do not apply to advertisements by political committees that mention only candidates for state office.

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C:\Users\gwillard\Documents\FEC Matters\RGAs\MUR
7095\Response to Complaint.docx

requirements of 11 C.F.R. 110.11.² And surely the written "XXX is responsible" disclaimer seems on its face to apply to communications such as RDP's, merely because they were "transmitted through television or through any broadcast, cable, or satellite transmission[.]"³

But the analysis doesn't end here. First, RDP's ads were coordinated with the gubernatorial candidate.⁴ That being so, the proper written disclaimer, according to complainant's logic, would have been the one applicable to coordinated expenditures such as: "I am [insert name of candidate], a candidate for [insert Federal office sought], and I approved this advertisement."⁵

The problem with complainant's argument is apparent on the face of the aforementioned example: the named candidate is one running for federal office, which is also consistent with the definition of "candidate".⁶ And the analysis would obviously not change if RDP's ads had been independent expenditures. To maintain that the disclaimer requirement attached to coordinated expenditures extends only to elections for federal office while the disclaimer requirement for independent expenditures applies to elections for federal, state and local offices would be an asymmetrical and nonsensical reading of BCRA and the regulations.

Moreover, "[i]t is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme."⁷ And considering the overall statutory scheme, there is absolutely no evidence of a congressional intent to embrace communications influencing elections for state and local office in either BCRA's legislative history or in the Commission's rulemaking implementing the amendments to section 441d(a) (now 52 U.S.C. § 30120(a)). As the Supreme Court observed, at the time of its enactment BCRA was the "most recent federal enactment designed 'to purge national politics of what was conceived to be the pernicious influence of 'big money' campaign contributions.'"⁸

² § 110.11(a)(1).

³ § 110.11(c)(4)(iii).

⁴ Compare the enclosed RDP 2016 July Quarterly, p.16, with *Mike Pence for Indiana* 2016 2nd Quarter report, pp. 537, 651; and see Letter from RDP Treasurer to Station Managers.

⁵ § 110.11(c)(3)(iii)(iv).

⁶ § 100.3(a) ("Candidate means an individual who seeks nomination for election, or election, to federal office.).

⁷ Advisory Op. 2003-12 (Flake), n.8 (quoting *Davis v. Mich. Dep't of Treas.*, 489 U.S. 803, 809 (1989)).

⁸ *McConnell v. Federal Election Comm'n*, 540 U.S. 93, 115 (2003).

More specifically, the disclaimer provision at issue was upheld as constitutional because it bore a "sufficient relationship to the important governmental interest of 'shed[ding] the light of publicity' on campaign financing. *Buckley*, 424 U.S., at 81"⁹, that is, the interest of, among other things, "aid[ing] the voters in evaluating those who seek federal office."¹⁰

Both before and after BCRA, the scope of both express advocacy and communications soliciting contributions was limited by their terms to advocacy of the election or defeat of, and solicitation of contributions for, candidates for federal elections.¹¹ BCRA then "expand[ed] the scope of the disclaimer requirement for political committees beyond express advocacy and communications soliciting contributions."¹² That is, beyond this more narrow class of communications so that all public communications influencing a federal election would have to contain disclaimers. As stated by the prevailing minority in the Report of the Committee on House Administration:

Both political parties, as well as a wide range of interest groups and entities whose origin and purpose remain largely a mystery, have exploited issue advocacy in recent elections to run ads that clearly are designed to advocate the election or defeat of specific federal candidates, but evade federal election regulations by avoiding the "magic words." Since these ads stop just short of using the magic words, their sponsors are not subject to full public disclosure, the ads need carry no disclaimer[.]¹³

Finally, BCRA and the Commission's regulations understandably did not take into account the reality on the ground that federal political committees were, and continue to be, employed to influence elections for state office. Certain state campaign finance

⁹ *Id.*, at 231.

¹⁰ *Buckley v. Valeo*, 424 U.S. 1, 66-7 (1973) (emphasis added).

¹¹ See 2 U.S.C. § 431(2) and now 52 U.S.C. § 30101(2) ("candidate" means an individual who seeks nomination for election, or election, to Federal office") (emphasis added); § 431(8)(A) and now 52 § 30101(8)(A) ("The term 'contribution' includes . . . anything of value made by any person for the purpose of influencing any federal election") (emphasis added); and § 431(17)(A) and now 52 § 30101(17)(A) ("The term 'independent expenditure' means an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate[.]") (emphasis added).

¹² *Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds*, 67 Fed. Reg. 76962, 76964.

¹³ House Rept. 107-131, Minority Views of Steny H. Hoyer, Chaka Fattah, and Jim Davis, p.50 (emphasis added).

August 29, 2016

regimes – in the interest of avoiding undue burden and duplication – explicitly permit state election-influencing activity by federal committees without the additional requirement of having to register and report as a state committee pursuant to state law.

Indiana law, for example, permits federal committees to meet its reporting requirements by simply filing a duplicate of its federal report or even only a statement to the effect that the “report is available on the Federal Election Commission’s website”.¹⁴ Ohio¹⁵ and Texas¹⁶ are two other examples.

Consequently, given that Congress did not intend to embrace political committee communications mentioning only candidates for state office, and that the regulatory language itself does not admit the possibility of apply the disclaimer requirements to federal political committee ads mentioning only candidates for state office, the Commission should find that there is no reason to believe that *RDP* and its treasurer violated the FECA.

Sincerely,

Squire Patton Boggs (US) LLP



Glenn M. Willard

¹⁴ IC 3-9-5-13(d).

¹⁵ Ohio Rev. Code § 3517.107.

¹⁶ Tex. Elec. Code §§ 251.005; 254.1581; 20 Tex. Admin. Code § 20.13.

Image# 201607149020457809

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**FEC
FORM 3X****REPORT OF RECEIPTS
AND DISBURSEMENTS**
For Other Than An Authorized Committee

Office Use Only

1. NAME OF COMMITTEE (in full) TYPE OR PRINT ▼ Example: If typing, type over the lines. 12FE4M5

RGA RIGHT DIRECTION PAC

ADDRESS (number and street)

1747 PENNSYLVANIA AVE NW SUITE 250

Check if different
than previously
reported. (ACC)

WASHINGTON

DC

20006

2. FEC IDENTIFICATION NUMBER ▼ CITY ▲ STATE ▲ ZIP CODE ▲

C C00490730

3. IS THIS REPORT X NEW (N) OR AMENDED (A)

4. TYPE OF REPORT
(Choose One)

(a) Quarterly Reports:

April 15
Quarterly Report (Q1)

X July 15
Quarterly Report (Q2)

October 15
Quarterly Report (Q3)

January 31
Year-End Report (YE)

July 31 Mid-Year
Report (Non-election
Year Only) (MY)

Termination Report
(TER)

(b) Monthly Report Due On:

Feb 20 (M2)	May 20 (M5)	Aug 20 (M8)	Nov 20 (M11) (Non-Election Year Only)
Mar 20 (M3)	Jun 20 (M6)	Sep 20 (M9)	Dec 20 (M12) (Non-Election Year Only)
Apr 20 (M4)	Jul 20 (M7)	Oct 20 (M10)	Jan 31 (YE)

(c) 12-Day PRE-Election Report for the:

Primary (12P)	General (12G)	Runoff (12R)
Convention (12C)	Special (12S)	

Election on _____ in the State of _____

(d) 30-Day POST-Election Report for the:

General (30G)	Runoff (30R)	Special (30S)
---------------	--------------	---------------

Election on _____ in the State of _____

5. Covering Period 04 01 2016 through 06 30 2016

I certify that I have examined this Report and to the best of my knowledge and belief it is true, correct and complete.

Type or Print Name of Treasurer Michael Adams

Signature of Treasurer

Michael Adams

[Electronically Filed]

Date

07 14 2016

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Report to the penalties of 2 U.S.C. §437g.

Office
Use
Only**FEC FORM 3X**
Rev. 12/2004

**SCHEDULE B (FEC Form 3X)
ITEMIZED DISBURSEMENTS**Use separate schedule(s)
for each category of the
Detailed Summary PageFOR LINE NUMBER:
(check only one)

PAGE 16 OF 17

<input type="checkbox"/> 21b	<input type="checkbox"/> 22	<input type="checkbox"/> 23	<input type="checkbox"/> 24	<input type="checkbox"/> 25	<input type="checkbox"/> 26
<input type="checkbox"/> 27	<input type="checkbox"/> 28a	<input type="checkbox"/> 28b	<input type="checkbox"/> 28c	<input checked="" type="checkbox"/> 29	<input type="checkbox"/> 30b

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (In Full)

RGA RIGHT DIRECTION PAC

Full Name (Last, First, Middle Initial)

A. Target Enterprises LLC

Date of Disbursement

M M / D D / Y Y Y Y
06 06 2016Mailing Address 15260 Ventura Blvd
Suite 1240City State Zip Code
Sherman Oaks CA 91403Purpose of Disbursement
Non-Federal Media Placement

Candidate Name

Category/
Type

Transaction ID : SB29.4734

Amount of Each Disbursement this Period

647736.00

Memo Item

Office Sought: House
Senate
PresidentDisbursement For:
Primary General
Other (specify) ▼

State: District:

Full Name (Last, First, Middle Initial)

B. Target Enterprises LLC

Date of Disbursement

M M / D D / Y Y Y Y
06 17 2016Mailing Address 15260 Ventura Blvd
Suite 1240City State Zip Code
Sherman Oaks CA 91403Purpose of Disbursement
Non-Federal Media Placement

Candidate Name

Category/
Type

Transaction ID : SB29.4746

Amount of Each Disbursement this Period

647736.00

Memo Item

Office Sought: House
Senate
PresidentDisbursement For:
Primary General
Other (specify) ▼

State: District:

Full Name (Last, First, Middle Initial)

C.

Date of Disbursement

M M / D D / Y Y Y Y

Mailing Address

City State Zip Code

Purpose of Disbursement

Candidate Name

Category/
Type

Amount of Each Disbursement this Period

Memo Item

Office Sought: House
Senate
PresidentDisbursement For:
Primary General
Other (specify) ▼

State: District:

SUBTOTAL of Disbursements This Page (optional).....▶

1295472.00

TOTAL This Period (last page this line number only).....▶

2957072.91



**REPORT OF RECEIPTS AND EXPENDITURES
OF A POLITICAL COMMITTEE**

State Form 4806 (R13/11-05)
Indiana Election Commission (IC 3-9-5-14)

**(CFA-4)
Summary Sheet**

FILE NUMBER

6171

TOTAL PAGES IN ENTIRE CFA-4 REPORT

656

INSTRUCTIONS: Please type or print legibly in **BLACK INK** all information on this form. For assistance in completing this form, see instructions on the reverse side.

IS THIS AN AMENDMENT? ☐ Yes ☒ No

COMMITTEE INFORMATION

1. Full name of committee (as on Statement of Organization)

Mike Pence for Indiana

☐ Check if this is a new name

2. Acronym or abbreviated name, if any

3. Committee telephone number

(317) 569-0709

4. Mailing address (address where all campaign finance correspondence is received)

P.O. BOX 902

☐ Check if this is a new address

5. City, state, ZIP code

INDIANAPOLIS IN 46206

6. Party affiliation (if applicable)

Republican

CANDIDATE INFORMATION (For Candidate's Committee Only)

7. Full name of candidate (include any nickname)

Michael Richard Pence

8. Party affiliation or if independent

Republican

9. Office sought (include district number, if any. Not required for exploratory committee.)

GOVERNOR

10. County of residence

Marion

TYPE OF REPORT

11.

Quarterly

CONVENTION CANDIDATES ONLY

12. Check one:

☐ Pre-Convention

☐ Post-Convention

12. Reporting period:

From: 04/01/2016

Through: 06/30/2016

COLUMN A

This Period

COLUMN B

Year to Date

13. Cash on hand and investments at the beginning of this reporting period.

7,657,291.55

14. Cash on hand and investments January 1, current year.

6,767,723.20

CONTRIBUTIONS AND RECEIPTS

(Note: These amounts include in-kind contributions and loans, as well as cash contributions.)

15a. Itemized (use Schedule A)

4,198,149.30

5,726,061.12

15b. Unitemized

0.00

0.00

15c. Add lines 15a, and 15b in both columns

SUBTOTAL

4,198,149.30

5,726,061.12

16. Add lines 13 and 15c in Column A and lines 14 and 15c in Column B

TOTAL

11,855,440.85

12,493,784.32

EXPENDITURES

(Note: These amounts include in-kind expenditures and loan repayments.)

17a. Itemized (use Schedule B) (Public Question: use Schedule C)

4,455,988.87

5,094,332.34

17b. Unitemized

0.00

0.00

17c. Add lines 17a and 17b in both columns

SUBTOTAL

4,455,988.87

5,094,332.34

18. Cash on hand and investments at close of this reporting period (subtract 17c from 16 in both columns)

TOTAL

7,399,451.98

7,399,451.98

19. Debts OWED BY the committee (use Schedule D)

0.00

20. Debts OWED TO the committee (use Schedule E)

0.00

CERTIFICATION

I CERTIFY THAT I HAVE EXAMINED THIS STATEMENT, TO THE BEST OF MY KNOWLEDGE AND BELIEF IT IS TRUE, CORRECT AND COMPLETE.

Signature of Treasurer

Title

Date

Signature Included

Treasurer

07/15/2016

Signature of Candidate (if applicable)

Date

Signature Included

07/15/2016

FOR OFFICE USE ONLY

Filed: Online

7/15/16 10:59 am

WARNING: Any information contained in this report may not be copied for sale or used for any commercial purpose.
(IC 3-9-4-5) A person who knowingly files a fraudulent report commits a Class D Felony. (IC 3-14-1-13) A person who fails to file a complete or accurate report as required by the Indiana Campaign Finance Law commits a Class B Misdemeanor (IC 3-14-1-14) and may be subject to civil penalties (IC 3-9-4-16, 3-9-4-17, 3-9-4-18.)



**REPORT OF RECEIPTS AND EXPENDITURES
OF A POLITICAL COMMITTEE**

State Form 4806 (R13/11-05)
Indiana Election Commission (IC 3-9-5-14)

**(CFA-4 SCHEDULE A-4)
CONTRIBUTIONS BY
POLITICAL ACTION COMMITTEES**

INSTRUCTIONS: LIST ONLY CONTRIBUTIONS BY POLITICAL ACTION COMMITTEES ON THIS SCHEDULE.
Please type or print legibly in BLACK INK all information on this schedule. For assistance in completing this schedule, see instructions on the reverse side. This schedule is used to document contributions and receipts related to ITEM 15a of the Summary Sheet. All cumulative contributions from political action committees OVER \$100 per contributor, within a calendar year MUST be itemized on this schedule (over \$200, if regular party committee). All transfers-in and in-kind contributions regardless of the amount from political action committees MUST be itemized on this schedule. All cumulative receipts, (such as loan proceeds and repayments, refunds, rebates, returns of deposit, proceeds from sales, interest or other income) OVER \$100 per contributor, within a calendar year, MUST be itemized on this schedule (over \$200 if regular party committee).

FILE NUMBER

6171

Page 1 of 10

CONTRIBUTOR'S FULL NAME AND FULL MAILING ADDRESS (street, number, city, state ZIP code)		TYPE OF CONTRIBUTION OR OTHER RECEIPT	COLUMN A AMOUNT THIS PERIOD	COLUMN B CUMULATIVE YEAR-TO-DATE	DATE RECEIVED RECEIVED BY
1 Northeast Indiana PAC for Better Government, LLC 9410 Blue Ash Court Fort Wayne IN 46804	Contribution: Direct		10,000.00	10,000.00	04/28/2016
					Jeanne Luttrull
2 Friends of Indiana Hospital PAC 500 N. Meridian St. Ste. 250 Indianapolis IN 46204	Contribution: Direct		10,000.00	10,000.00	05/26/2016
					Jeanne Luttrull
3 The Hall Way PAC One American Square, Ste. 2000 Indianapolis IN 46282	Contribution: Direct		10,000.00	10,000.00	05/26/2016
					Jeanne Luttrull
4 RGA Right Direction PAC 1747 Pennsylvania Ave. NW Suite 250 Washington DC 20006	Contribution: In-Kind Media Buy & Production		822,736.00	1,322,736.00	06/03/2016
					Jeanne Luttrull
5 RGA Right Direction PAC 1747 Pennsylvania Ave. NW Suite 250 Washington DC 20006	Contribution: In-Kind Media Buy		647,736.00	1,970,472.00	06/16/2016
					Jeanne Luttrull
SUB TOTAL THIS PAGE OF SCHEDULE A			\$	1,500,472.00	
TOTAL OF ALL PAGES OF SCHEDULE A ON THE LAST PAGE ONLY (Enter total on ITEM 15a of the Summary Sheet)			\$		



**REPORT OF RECEIPTS AND EXPENDITURES
OF A POLITICAL COMMITTEE**

State Form 4808 (R13/11-05)
Indiana Election Commission (IC 3-8-5-14)

**(CFA-4 SCHEDULE B)
Itemized Expenditures**

INSTRUCTIONS: Please type or print legibly **IN BLACK INK** all information on this form. For assistance in completing this schedule, see instructions on the reverse side. This schedule is used to document expenditures **totaling on ITEM 17a** of the Summary Sheet. All cumulative expenses paid to individuals, businesses, labor organizations and other entities **OVER \$100** per recipient, within a calendar year **MUST** be itemized on this schedule (over \$200, if regular party committee). All cumulative expenses, including in-kind, **regardless of amount paid** to political committees (such as transfers-out from candidate, legislative caucus, political action, or regular party committees) **MUST** be itemized on this schedule.

FILE NUMBER

6171

Page 82 of 87

RECIPIENT'S NAME AND MAILING ADDRESS (street, number, city, state, ZIP code)	RECIPIENT'S OCCUPATION	TYPE OF EXPENDITURE and PURPOSE (be specific)	COLUMN A AMOUNT THIS PERIOD	COLUMN B CUMULATIVE YEAR-TO-DATE	DATE OF EXPENDITURE
	OFFICE SOUGHT (if applicable)				
Code: Advertising 1 RGA Right Direction PAC 1747 Pennsylvania Ave. NW Suite 250 Washington DC 20006	Other	In-Kind Purpose: Media Buy	647,736.00	1,473,472.00	06/16/2016
Code: Operations 2 Marsh Supermarkets 2042 St Andrews Circle Carmel IN 46032	Other	Direct Purpose: Networking	21.30	530.86	06/16/2016
Code: Operations 3 MBP Distinctive Catering 2502 E 52nd St Indianapolis IN 46205	Other	Direct Purpose: Meeting meals	16.81	59.28	06/16/2016
Code: Operations 4 Staples 1501 W. McGalliard Muncie IN 47305	Other	Direct Purpose: Office supplies	80.23	80.23	06/16/2016
Code: Fundraising 5 Barfly Ventures 6280 N. College Ave Indianapolis IN 46220	Other	Direct Purpose: Event catering	49.31	49.31	06/16/2016
Code: Fundraising 6 McCormick & Schmick 110 N Illinois St Indianapolis IN 46204	Other	Direct Purpose: Event catering	32.16	351.71	06/16/2016
Code: Operations 7 Au Bon Pain 402 W. Washington St Indianapolis IN 46204	Other	Direct Purpose: Food & Beverage	12.51	12.51	06/16/2016
SUB TOTAL THIS PAGE OF SCHEDULE B			\$ 647,948.32		
TOTAL OF ALL PAGES OF SCHEDULE B ON THE LAST PAGE ONLY (Enter total on ITEM 17a of the Summary Sheet)			\$		

RGGA

REPUBLICAN GOVERNORS ASSOCIATION

June 1, 2016

Dear Station Managers:

Please be apprised that RGA Right Direction PAC, an affiliate of the Republican Governors Association, has made a contribution to Mike Pence for Indiana, a gubernatorial campaign committee, in the form of an in-kind contribution of coordinated advertising.

Indiana Code section 3-9-2-4, the state's contribution limits statute, places no limit on what PACs may contribute (in cash or in-kind) to an Indiana gubernatorial candidate. Because RGA Right Direction PAC is not limited in the amount it may contribute to Mike Pence for Indiana, this significant in-kind contribution of coordinated advertising is permissible.

Indiana law imputes a coordinated expenditure to the beneficiary candidate. In fact, the beneficiary candidate must report the in-kind contribution both as a receipt for, *and as an expenditure by*, the beneficiary candidate.¹

Sincerely,



Michael G. Adams
General Counsel

¹ Indiana Election Division, *2016 Indiana Campaign Finance Manual*, at 26 ("The reason for the double entry of the value of an in-kind contribution (on the contribution schedule and the expenditure schedule of the CFA-4) is that the receipt by a committee of a non-cash item (posters, lodging, transportation, etc.) *is considered the same as* receiving the value of the goods or services in money and then *spending that money to obtain the goods or services.*") (emphasis added).