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FEDERAL ELECTION  
COMMISSION

2011 JUL 14 PM 4:16

BEFORE THE FEDERAL ELECTION COMMISSION

CELA

In the Matter of	)	
	)	
Friends of Sharron Angle, et al.	)	MUR 6377
(Recirculation of Revised Factual and	)	
Legal Analysis and Recommendation to	)	
Close the File)	)	

CERTIFICATION

I, Shawn Woodhead Werth, Secretary and Clerk of the Federal Election Commission, do hereby certify that on July 13, 2011, the Commission decided by a vote of 4-0 to take the following actions in MUR 6377:

1. Approve the revised Factual and Legal Analysis, as recommended in the General Counsel's Memorandum dated July 11, 2011, subject to the edits as agreed to via email.
2. Close the file as to all respondents in MUR 6377.

Commissioners Bauerly, Hunter, McGahn II, and Petersen voted affirmatively for the decision. Commissioners Walther and Weintraub recused themselves with respect to this matter and did not vote.

Attest:

July 14, 2011  
Date

Shawn Woodhead Werth  
Shawn Woodhead Werth  
Secretary and Clerk of the Commission

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
Harry Reid Votes and Allison Van Over, ) MUR 6377  
in her official capacity as Treasurer; )  
Daniel J. Tarkanian )  
)

**STATEMENT OF REASONS  
CHAIR CYNTHIA L. BAUERLY**

The complaint in this matter alleged that during the 2010 campaign for Nevada’s U.S. Senate seat, Harry Reid Votes and Allison Van Over, in her official capacity as treasurer, (collectively, “HRV”)<sup>1</sup> violated Section 432(e)(4) of the Federal Election Campaign Act of 1971, as amended (“the Act”), by including the name of a federal candidate, Senator Harry Reid, in its official title. Complaint at 5-6. I, along with Vice Chair Hunter and Commissioner Petersen, supported the recommendation of the Office of General Counsel (“OGC”) to find reason to believe that HRV, an unauthorized committee created and operated by Daniel J. “Danny” Tarkanian, used the name of a federal candidate in its title.<sup>2</sup> A motion to find reason to believe that HRV violated 2 U.S.C. § 432(e)(4) failed by a vote of 3-1.<sup>3</sup>

<sup>1</sup> Harry Reid Votes, Harry Reid Votes, Inc., and www.harryreidvotes.com are the same entity. “HRV” refers to all three designations.

<sup>2</sup> The complaint also alleged that HRV made and Friends of Sharon Angle and Alan B. Mills, in his official capacity as treasurer (collectively, “the Angle Committee”), and Sharron E. Angle, accepted through their purported agent, Danny Tarkanian, excessive in-kind contributions in the form of coordinated communications that expressly advocated against Ms. Angle’s general election opponent, Senator Harry Reid, in violation of Section 441a of the Act. Complaint at 3-5. Further, the complaint alleged that the public communications HRV financed did not include the appropriate disclaimers, in violation of Section 441d(a) of the Act. For the reasons contained in the Factual and Legal Analyses approved in this matter, I, along with Vice Chair Hunter and Commissioners Petersen and McGahn, supported the recommendations to find no reason to believe HRV and Tarkanian violated 2 U.S.C. § 441a(a) and the Angle Committee and Angle violated 2 U.S.C. § 441a(f) and voted to dismiss with caution the allegation that HRV violated 2 U.S.C. § 441d(a). See Factual and Legal Analysis (Harry Reid Votes, *et al.*); Factual and Legal Analysis ( Friends of Sharron Angle, *et al.*).

<sup>3</sup> Commissioners Bauerly, Hunter, and Petersen voted to find reason to believe HRV violated 2 U.S.C. § 432(e)(4). Commissioner McGahn dissented. Commissioners Walther and Weintraub recused themselves and did not vote. Certification in MUR 6377, dated June 14, 2011.

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HRV violated the Act and the Commission's regulations by registering with the Commission as an unauthorized political committee that used a candidate's name in its official title. The Act and the Commission's regulations prohibit the use of a candidate's name in the officially registered name of an unauthorized committee. See 2 U.S.C. § 432(e)(4) and 11 C.F.R. § 102.14(a). See also Advisory Opinion 1995-09 (NewtWatch) (the Commission advised an unauthorized committee opposed to then-Speaker of the House of Representatives Newt Gingrich that the term "NewtWatch" may not be used as part of the Committee's name). This prohibition includes "any name under which a committee conducts activities, such as solicitations or other communications, including a special project name or other designation." 11 C.F.R. § 102.14(a). However, a committee may include the name of a candidate in the title of a delegate committee, the title of a draft committee or the title of a special project or other communication if the title clearly and unambiguously shows opposition to the named candidate. 11 C.F.R. 102.14(b)(1)-(3); Explanation and Justification, *Special Fundraising Projects and Other Use of Candidate Names by Unauthorized Committees*, 59 Fed. Reg. 17267 (April 12, 1994).

HRV contends that the prohibition against using a federal candidate's name in the title of an unauthorized committee does not apply to it because it is not a political committee. HRV Response at 4. However, HRV is a political committee registered with the Commission. On August 24, 2010, HRV filed a Statement of Organization with the Commission, registering as a non-connected political committee. See [http://query.nictusa.com/cgi-bin/fecinfo/?\\_10030413054+0](http://query.nictusa.com/cgi-bin/fecinfo/?_10030413054+0). While HRV claims it had filed the Statement of Organization in error or that its Statement of Organization is void and that it is not a political action committee or independent expenditure committee, see HRV Letters to the Commission, dated October 1, 2010 and October 29, 2010, the fact remains that HRV registered with the Commission as a non-connected political committee on August 24, 2010.

HRV also contends that even if it were a political committee, its title would be lawful because the possibility of "confusion" and "abuse" does not exist here given that "[a]ll materials that feature HRV's name 'clearly and unambiguously show opposition' to candidates like Senator Harry Reid, and make plain that HRV combats policies those candidates would enact." HRV Response at 4. The regulatory exception at 11 C.F.R. § 102.14(b)(3) does provide that an unauthorized committee may use a candidate's name in a special project if the title clearly and unambiguously shows opposition to the named candidate without reference to the project's content. See MUR 6213 (DUMPREID PAC) Factual and Legal Analysis at 3-5 (the Commission determined that the use of Senator Reid's name in its website, [www.dumpreid.com](http://www.dumpreid.com), was permissible because the website was a special project whose title was clearly and unambiguously in opposition to Senator Reid). HRV does not contend that "Harry Reid Votes" or [www.harryreidvotes.com](http://www.harryreidvotes.com) is a special project name, but even if it did, this regulatory exception does not apply here because the title "Harry Reid Votes" is not clearly and unambiguously in opposition to Senator Reid.

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MUR 6377 (Harry Reid Votes, et al.)  
Statement of Chair Bauerly  
Page 3 of 3

For the foregoing reasons, I voted to find reason to believe HRV, a non-connected political committee, violated the Act and the Commission's regulations by registering as an unauthorized political committee that impermissibly used a candidate's name in its official title.

8/12/11  
Date

Cynthia L. Bauerly  
Cynthia L. Bauerly  
Chair

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BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED  
FEDERAL ELECTION  
COMMISSION

2011 JUL 11 PM 12:31

In the Matter of )  
 ) MUR 6377  
Friends of Sharron Angle and Alan B. )  
Mills, in his official capacity as treasurer; )  
Sharron E. Angle; Harry Reid Votes and )  
Allison Van Over, in her official capacity )  
as treasurer; Daniel J. Tarkanian )

CELA

AMENDED CERTIFICATION

I, Shelley E. Garr, recording secretary of the Federal Election Commission executive session, do hereby certify that on June 14, 2011, the Commission took the following actions in the above-captioned matter:

1. Failed by a vote of 3-1 to:
  - a. Find no reason to believe Friends of Sharron Angle and Alan B. Mills, in his official capacity as treasurer, and Sharron E. Angle violated 2 U.S.C. § 441a(f).
  - b. Find no reason to believe Harry Reid Votes and Allison Van Over, in her official capacity as treasurer, and Daniel J. Tarkanian violated 2 U.S.C. § 441a(a).
  - c. Find reason to believe Harry Reid Votes and Allison Van Over, in her official capacity as treasurer, violated 2 U.S.C. § 432(e)(4).
  - d. Find reason to believe Harry Reid Votes and Allison Van Over, in her official capacity as treasurer, violated 2 U.S.C. § 441d(a).
  - e. Enter into pre-probable cause conciliation with Harry Reid Votes and Allison Van Over, in her official capacity as treasurer.
  - f. Approve the Factual and Legal Analyses as recommended in the First General Counsel's Report dated April 27, 2011.
  - g. Approve the conciliation agreement as recommended in the First General Counsel's Report dated April 27, 2011.
  - h. Approve the appropriate letter.

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- i. Close the file as to Friends of Sharron Angle and Alan B. Mills, in his official capacity as treasurer, Sharron E. Angle, and Daniel J. Tarkanian.

Commissioners Bauerly, Hunter, and Petersen voted affirmatively for the motion.

Commissioner McGahn II dissented. Commissioners Walther and Weintraub recused themselves and did not vote.

2. Decided by a vote of 4-0 to:

- a. Find no reason to believe Friends of Sharron Angle and Alan B. Mills, in his official capacity as treasurer, and Sharron E. Angle violated 2 U.S.C. § 441a(f).
- b. Find no reason to believe Harry Reid Votes and Allison Van Over, in her official capacity as treasurer, and Daniel J. Tarkanian violated 2 U.S.C. § 441a(a).
- c. Dismiss the allegation that Harry Reid Votes and Allison Van Over, in her official capacity as treasurer, violated 2 U.S.C. § 441d(a) and send a caution letter based on the discussion at the table.
- d. Approve the Factual and Legal Analyses as recommended in the First General Counsel's Report dated April 27, 2011, but modified to revise the Factual and Legal Analyses as appropriate, and circulate on a no objection tally.
- e. Approve the appropriate letters.
- f. Close the file as to Friends of Sharron Angle and Alan B. Mills, in his official capacity as treasurer, Sharron E. Angle, and Daniel J. Tarkanian.

Commissioners Bauerly, Hunter, McGahn II, and Petersen voted affirmatively for the decision. Commissioners Walther and Weintraub recused themselves and did not vote.

Attest:

July 11, 2011  
Date

Shelley E. Garr  
Shelley E. Garr  
Deputy Secretary of the Commission

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Advanced Copy via Facsimile: (702) 735-2700

July 15, 2011

Sam Lieberman  
Chair, Nevada State Democratic Party  
1210 S. Valley View Blvd., Suite 114  
Las Vegas, NV 89102

RE: MUR 6377

Dear Mr. Lieberman:

On June 14, 2011, the Federal Election Commission reviewed the allegations in your complaint dated September 15, 2010, and found that on the basis of the information provided in your complaint, and information provided by Friends of Sharron Angle and Alan B. Mills, in his official capacity as treasurer, Sharron E. Angle, Harry Reid Votes and Allison Van Over, in her official capacity as treasurer, and Daniel J. Tarkanian, there is no reason to believe Friends of Sharron Angle and Alan B. Mills, in his official capacity as treasurer and Sharron E. Angle, violated 2 U.S.C. § 441a(f), and no reason to believe that Harry Reid Votes and Allison Van Over, in her official capacity as treasurer, and Daniel J. Tarkanian violated 2 U.S.C. § 441a(a). There was an insufficient number of votes to find reason to believe Harry Reid Votes and Allison Van Over, in her official capacity as treasurer violated 2 U.S.C. § 432(e)(4). Further, the Commission voted to dismiss the allegations that Harry Reid Votes and Allison Van Over, in her official capacity as treasurer violated 2 U.S.C. § 441d(a). At the same time, the Commission cautioned Harry Reid Votes and Allison Van Over, in her official capacity as treasurer, to take steps to ensure that their actions are in compliance with all disclaimer requirements in accordance with the Federal Election Campaign Act of 1971 ("the Act"), and Commission regulations. Accordingly, on July 13, 2011, 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 Analyses which more fully explain the Commission findings as to the Friends of Sharron Angle and Alan B. Mills, in his official capacity as treasurer, Sharron E. Angle, Harry Reid Votes and Allison Van Over, in her official capacity as treasurer, and Daniel J. Tarkanian are enclosed. A Statement of Reasons regarding the 2 U.S.C. § 432(e)(4) allegation as to Harry Reid Votes and Allison Van Over, in her official capacity as treasurer, will follow.

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Letter to Mr. Lieberman  
MUR 6377 (Friends of Sharron Angle, et al.)  
Page 2 of 2

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 2 U.S.C. § 437g(a)(8).

If you have any questions, please contact Christine C. Gallagher, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

Christopher Hughey  
Acting General Counsel



BY: Susan L. Lebeaux  
Acting Deputy Associate General Counsel

Enclosures  
Factual and Legal Analyses (2)

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Sharron Angle for Congress and Alan B. Mills, MUR 6377  
in his official capacity as treasurer  
Sharron E. Angle

**I. BACKGROUND**

This matter was generated by a complaint filed with the Federal Election Commission by Sam Lieberman, Chair, Nevada State Democratic Party. See 2 U.S.C. § 437g(a)(1). According to the complaint, during the 2010 campaign for Nevada’s U.S. Senate seat, Friends of Sharron Angle and Alan B. Mills, in his official capacity as treasurer (“the Angle Committee”), and Sharron E. Angle, accepted excessive in-kind contributions from Harry Reid Votes and Allison Van Over, in her official capacity as treasurer (“HRV”), through their purported agent, Daniel J. “Danny” Tarkanian, in the form of coordinated communications that expressly advocated against Ms. Angle’s general election opponent, Senator Harry Reid.<sup>1</sup> See 2 U.S.C. §§ 441a(a)(7)(B)(i) and 441a(f). Mr. Tarkanian had previously lost the 2010 Republican Senate primary in Nevada to Ms. Angle. After his loss, Mr. Tarkanian created and operated HRV. The Angle Committee and Ms. Angle deny the allegations of the complaint.

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Factual Background**

According to the Nevada Secretary of State’s website, HRV filed a Non Profit Articles of Incorporation on August 18, 2010, describing as its purpose “to provide public information on federal political races.” On August 20, 2010, HRV filed a Notice of Section 527 Status with the Internal Revenue Service (“IRS”), describing its purpose the same way, and it has filed

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<sup>1</sup> Harry Reid Votes, Harry Reid Votes, Inc., and [www.harryreidvotes.com](http://www.harryreidvotes.com) are the same entity. “HRV” refers to all three designations, unless otherwise specified.

1 disclosure reports with the IRS under Section 527. *See* 26 U.S.C. § 527. On August 24, 2010,  
2 HRV filed a Statement of Organization with the Commission, registering as a non-connected  
3 political committee with the purpose of opposing Senator Harry Reid. *See*  
4 [http://query.nictusa.com/cgi-bin/fecimg/?\\_10030413054+0](http://query.nictusa.com/cgi-bin/fecimg/?_10030413054+0).

5 HRV has filed 24-Hour and 48-Hour Independent Expenditure Reports, and a 2010  
6 October Quarterly Report with the Commission disclosing receipts of contributions and  
7 independent expenditures covering the period of August 1, 2010, through October 19, 2010, as a  
8 person or group other than a political committee. *See* 2 U.S.C. § 434(c). HRV has not filed any  
9 disclosure reports of receipts and disbursements with the Commission as a political committee;  
10 the Reports Analysis Division (“RAD”) has sent notices concerning HRV’s non-filed reports.  
11 *See* [http://query.nictusa.com/cgi-bin/fecimg/?\\_10030484425+0](http://query.nictusa.com/cgi-bin/fecimg/?_10030484425+0); *see also*  
12 [http://query.nictusa.com/cgi-bin/fecimg/?\\_11030574539+0](http://query.nictusa.com/cgi-bin/fecimg/?_11030574539+0).

13 The complaint alleges that Danny Tarkanian was “apparently an agent of the Angle  
14 campaign, and yet has also registered and is operating a political committee, HRV, in order to  
15 attack Angle’s opponent [in Nevada’s 2010 U.S. Senate race], Senator Harry Reid.” Therefore,  
16 the complaint alleges, HRV’s expenditures for communications, including a radio advertisement  
17 and “planned” television advertisements attacking Senator Reid, constitute coordinated  
18 communications, and thus excessive contributions made to Ms. Angle and the Angle Committee.

19 The Angle Committee and Sharron E. Angle deny that any of HRV’s public  
20 communications were coordinated.

21 **B. Legal Analysis**

22 Expenditures made by any person in cooperation, consultation, or concert, with, or at the  
23 request or suggestion of, a candidate, his or her authorized political committees, or their agents,

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1 shall be considered to be a contribution to such candidate. 2 U.S.C. § 441a(a)(7)(B)(i). The  
2 Commission's regulations provide that any expenditure for a communication is considered an in-  
3 kind contribution to a campaign if it is (1) paid for by an entity other than the campaign,  
4 (2) meets certain content standards, including electioneering communications, public  
5 communications that contain express advocacy, or public communications that clearly identify a  
6 candidate for the Senate within 90 days of an election; and (3) meets certain conduct standards.<sup>2</sup>  
7 See 11 C.F.R. §§ 109.20 and 109.21. For the purpose of coordinated communications, an  
8 "agent" is defined as any person who has actual authority, either express or implied, to engage in  
9 certain enumerated activities on behalf of a federal candidate, including, *inter alia*, to request or  
10 suggest that a communication be created, produced, or distributed; to make or authorize a  
11 communication that meets one or more of the content standards set forth in 11 C.F.R.  
12 § 109.21(c); to request or suggest that any other person create, produce, or distribute any  
13 communication; or to be materially involved in decisions regarding the communication's  
14 content, intended audience, means or mode, specific media outlet, timing or frequency, or size or  
15 prominence of printed communication, or duration of a communication by means of broadcast,  
16 cable or satellite. 11 C.F.R. § 109.3(b)(1)-(6).

17 HRV filed FEC Form 5, Reports of Independent Expenditures Made and Contributions  
18 Received, disclosing contributions from individuals and corporations in the amount of \$46,550  
19 and independent expenditures of \$39,826.24, all of which were described as opposing candidate  
20 Harry Reid. Included in those expenditures were payments of \$2,135 to Red Clay

<sup>2</sup> The Commission recently revised its coordination communications content prong (11 C.F.R. § 109.21(c)(3) and (c)(5)) in response to the Circuit Court's decision in *Shays v. FEC*, 528 F.3d 914 (D.C. Cir. 2008). The new regulations were effective December 1, 2010. See Explanation and Justification, *Coordinated Communications*, 75 Fed. Reg. 55947 and 55952 (September 15, 2010). Because the activity in this matter occurred prior to December 1, 2010, the prior regulation applies. In any event, the coordination analysis includes only 11 C.F.R. § 109.21(c)(4)(i), not the revised subsections.

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1 Communications, Inc. for a radio advertisement on September 1, 2010. It does not appear that  
2 HRV ran any of the television advertisements it allegedly planned to run at the time of the  
3 complaint.

4 The radio advertisement met the payment and content prongs of the coordination  
5 regulations because it was paid for by HRV, an entity other than the campaign, and consisted of  
6 a public communication referring to a clearly identified Senate candidate publicly disseminated  
7 in the candidate's jurisdiction 90 days or fewer before the general election. See 11 C.F.R.  
8 §§ 109.21(c)(4)(i), and 100.26. However, based on the complaint, the Angle Committee's  
9 response, and as explained below, HRV's expenditure for the radio advertisement does not  
10 appear to meet the conduct prong. In addition, the costs associated with the radio advertisement,  
11 \$2,135, do not exceed the Act's \$5,000 contribution limit to political committees, and HRV did  
12 not make any other contributions to the Angle Committee that would make this alleged in-kind  
13 contribution excessive. 2 U.S.C. §§ 441a(a)(1)(C) and 441a(f).

14 Even if the cost of the alleged communications exceeded \$5,000, there is insufficient  
15 information that they were coordinated with the Angle Committee. The complaint's allegation  
16 that the radio advertisement was coordinated because Mr. Tarkanian was apparently an agent of  
17 the Angle Committee rests in part on Tarkanian's appearance at an event called "Gun Rights  
18 Night in Nevada," which was paid for and authorized by the Angle Committee, and at which  
19 both he and Ms. Angle spoke. The advertisement for the event lists Mr. Tarkanian as a guest  
20 speaker on the topic "Is Harry really for gun rights?" and lists key note speaker Angle as the "US  
21 Senate Candidate that will defeat Harry Reid." The allegation also relies on Mr. Tarkanian's  
22 hosting of "Tark Week," which consisted of seven days of campaigning for the Republican  
23 Party, including joining volunteers in calling people to ask them to support Reid's opponent, Ms.

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1 Angle. According to the complaint, “[e]ven apart from Tarkanian technically acting as an agent  
2 of Angle’s campaign, HRV’s communications are probably still ‘coordinated communications’”  
3 because “Angle or her campaign have probably requested or suggested that HRV create its ads,  
4 been materially involved or had substantial discussions about the creation of their ads, or  
5 otherwise coordinated their activities.” The Angle Committee and Ms. Angle deny that there  
6 was any coordination involving the HRV communications, and contend that Mr. Tarkanian’s  
7 appearance as a guest speaker at a campaign event does not meet the conduct prong’s evidentiary  
8 standard under 11 C.F.R. § 109.21(d).

9 Based on the complaint’s reasons for alleging that Mr. Tarkanian was an “agent” for  
10 coordination purposes, and information in the Commission’s possession, it does not appear that  
11 he meets the definition of “agent” set forth at 11 C.F.R. § 109.3(b). Mr. Tarkanian’s  
12 volunteering at a phone bank in support of Angle, speaking at an event also featuring the  
13 candidate, and registering a political committee to oppose Senator Reid do not, by themselves or  
14 in conjunction, show that he had actual authority to create or distribute communications on  
15 behalf of the Angle campaign. Nor do these activities provide a sufficient nexus to support the  
16 allegation that the Angle Committee “probably” made requests or suggestions, was materially  
17 involved in, or had substantial discussions about HRV’s communications, an allegation  
18 specifically denied by the Angle Committee. Given that Mr. Tarkanian was a 2010 Republican  
19 primary candidate, it is not surprising that he would oppose Senator Reid in the general election.

20 Therefore, there is no reason to believe that Friends of Sharron Angle and Alan B. Mills,  
21 in his official capacity as treasurer, and Sharron E. Angle violated 2 U.S.C. § 441a(f).

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Harry Reid Votes and Allison Van Over, MUR 6377  
in her official capacity as treasurer  
Daniel J. Tarkanian

**I. BACKGROUND**

This matter was generated by a complaint filed with the Federal Election Commission by Sam Lieberman, Chair, Nevada State Democratic Party. See 2 U.S.C. § 437g(a)(1). According to the complaint, during the 2010 campaign for Nevada’s U.S. Senate seat, Harry Reid Votes and Allison Van Over, in her official capacity as treasurer (“HRV”), made excessive in-kind contributions to Friends of Sharron Angle and Alan B. Mills, in his official capacity as treasurer (“the Angle Committee”), and Sharron E. Angle, through their purported agent, Daniel J. “Danny” Tarkanian, in the form of coordinated communications that expressly advocated against Ms. Angle’s general election opponent, Senator Harry Reid.<sup>1</sup> See 2 U.S.C. § 441a(a)(7)(B)(i). Mr. Tarkanian had previously lost the 2010 Republican Senate primary in Nevada to Ms. Angle. After his loss, Mr. Tarkanian created and operated HRV. The complaint further alleges that the title “Harry Reid Votes” violates 2 U.S.C. § 432(e)(4) of the Federal Election Campaign Act of 1971, as amended, (“the Act”), which prohibits unauthorized committees from using the name of a federal candidate in its title. Last, the complaint alleges that HRV’s radio advertisement that aired on September 1, 2010, did not include the appropriate disclaimer because it is a public communication and did not state that it was “Paid for by Harry Reid Votes,” did not include its address, phone number, or web address, nor a statement whether it was authorized by any candidate. See 2 U.S.C. § 441d. HRV and Mr. Tarkanian deny the allegations of the complaint.

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<sup>1</sup> Harry Reid Votes, Harry Reid Votes, Inc., and [www.harryreidvotes.com](http://www.harryreidvotes.com) are the same entity. “HRV” refers to all three designations, unless otherwise specified.

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1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Factual Background**

3 According to the Nevada Secretary of State's website, HRV filed a Non Profit Articles of  
4 Incorporation on August 18, 2010, describing as its purpose "to provide public information on  
5 federal political races." On August 20, 2010, HRV filed a Notice of Section 527 Status with the  
6 Internal Revenue Service ("IRS"), describing its purpose the same way, and it has filed  
7 disclosure reports with the IRS under Section 527. *See* 26 U.S.C. § 527. On August 24, 2010,  
8 HRV filed a Statement of Organization with the Commission, registering as a non-connected  
9 political committee with the purpose of opposing Senator Harry Reid. *See*  
10 [http://query.nictusa.com/cgi-bin/fecimg/?\\_10030413054+0](http://query.nictusa.com/cgi-bin/fecimg/?_10030413054+0). After the Commission notified  
11 HRV that the instant complaint had been filed against it, HRV submitted a letter to the  
12 Commission stating that it had filed the Statement of Organization in error, and that it is not a  
13 political action committee or independent expenditure committee. Due to the ongoing  
14 enforcement matter and consistent with usual practice, HRV's letter was treated as a termination  
15 request and denied pending the resolution of the MUR. Counsel for HRV then submitted a letter  
16 stating that HRV's previous letter was not a request to terminate, but rather was meant to inform  
17 the Commission that its Statement of Organization was "void" and that it would not therefore be  
18 filing disclosure reports with the Commission.

19 HRV has filed 24-Hour and 48-Hour Independent Expenditure Reports, and a 2010  
20 October Quarterly Report with the Commission disclosing receipts of contributions and  
21 independent expenditures covering the period of August 1, 2010, through October 19, 2010, as a  
22 person or group other than a political committee. *See* 2 U.S.C. § 434(c). HRV has not filed any  
23 disclosure reports of receipts and disbursements with the Commission as a political committee;

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1 the Reports Analysis Division (“RAD”) has sent notices concerning HRV’s non-filed reports.

2 See [http://query.nictusa.com/cgi-bin/fecimg/?\\_10030484425+0](http://query.nictusa.com/cgi-bin/fecimg/?_10030484425+0); see also

3 [http://query.nictusa.com/cgi-bin/fecimg/?\\_11030574539+0](http://query.nictusa.com/cgi-bin/fecimg/?_11030574539+0).

4 According to the complaint, Danny Tarkanian was “apparently an agent of the Angle  
5 campaign, and yet has also registered and is operating a political committee, HRV, in order to  
6 attack Angle’s opponent [in Nevada’s 2010 U.S. Senate race], Senator Harry Reid.” Therefore,  
7 the complaint alleges, HRV’s expenditures for communications, including a radio advertisement  
8 and “planned” television advertisements attacking Senator Reid, constitute coordinated  
9 communications, and thus excessive contributions made to Ms. Angle and the Angle Committee.  
10 The complaint further alleges that the disclaimer on HRV’s radio advertisement was deficient,  
11 and that HRV impermissibly uses the name of a federal candidate in its title.

12 HRV and Mr. Tarkanian submitted a joint response denying that Mr. Tarkanian was an  
13 “agent,” as defined by the Commission’s regulations, of the Angle Committee because he did not  
14 possess actual authority to represent the Angle campaign within the meaning of 11 C.F.R.  
15 § 109.3(b). The HRV Response also states that HRV’s radio advertisement contained an  
16 adequate disclaimer, and the presence of Harry Reid’s name in its title does not violate the  
17 prohibition against any unauthorized political committee using the name of any candidate in its  
18 name because it is not a federal political committee.

19 **B. Legal Analysis**

20 **1. Coordination Allegations**

21 Expenditures made by any person in cooperation, consultation, or concert, with, or at the  
22 request or suggestion of, a candidate, his or her authorized political committees, or their agents,  
23 shall be considered to be a contribution to such candidate. 2 U.S.C. § 441a(a)(7)(B)(i). The

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1 Commission's regulations provide that any expenditure for a communication is considered an in-  
2 kind contribution to a campaign if it is (1) paid for by an entity other than the campaign,  
3 (2) meets certain content standards, including electioneering communications, public  
4 communications that contain express advocacy, or public communications that clearly identify a  
5 candidate for the Senate within 90 days of an election; and (3) meets certain conduct standards.<sup>2</sup>  
6 See 11 C.F.R. §§ 109.20 and 109.21. For the purpose of coordinated communications, an  
7 "agent" is defined as any person who has actual authority, either express or implied, to engage in  
8 certain enumerated activities on behalf of a federal candidate, including, *inter alia*, to request or  
9 suggest that a communication be created, produced, or distributed; to make or authorize a  
10 communication that meets one or more of the content standards set forth in 11 C.F.R.  
11 § 109.21(c); to request or suggest that any other person create, produce, or distribute any  
12 communication; or to be materially involved in decisions regarding the communication's  
13 content, intended audience, means or mode, specific media outlet, timing or frequency, or size or  
14 prominence of printed communication, or duration of a communication by means of broadcast,  
15 cable or satellite. 11 C.F.R. § 109.3(b)(1)-(6).

16 HRV filed FEC Form 5, Reports of Independent Expenditures Made and Contributions  
17 Received, disclosing contributions from individuals and corporations in the amount of \$46,550  
18 and independent expenditures of \$39,826.24, all of which were described as opposing candidate  
19 Harry Reid. Included in those expenditures were payments of \$2,135 to Red Clay  
20 Communications, Inc. for a radio advertisement on September 1, 2010. It does not appear that

<sup>2</sup> The Commission recently revised its coordination communications content prong (11 C.F.R. § 109.21(c)(3) and (c) (5) in response to the Circuit Court's decision in *Shays v. FEC*, 528 F.3d 914 (D.C. Cir. 2008). The new regulations were effective December 1, 2010. See Explanation and Justification, *Coordinated Communications*, 75 Fed. Reg. 55947 and 55952 (September 15, 2010). Because the activity in this matter occurred prior to December 1, 2010, the prior regulation applies. In any event, the coordination analysis includes only 11 C.F.R. § 109.21(c)(4)(i), not the revised subsections.

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1 HRV ran any of the television advertisements it allegedly planned to run at the time of the  
2 complaint.

3 The radio advertisement met the payment and content prongs of the coordination  
4 regulations because it was paid for by HRV, an entity other than the campaign, and consisted of  
5 a public communication referring to a clearly identified Senate candidate publicly disseminated  
6 in the candidate's jurisdiction 90 days or fewer before the general election. See 11 C.F.R.  
7 §§ 109.21(c)(4)(i), and 100.26. However, based on the complaint and the response and as  
8 explained below, HRV's expenditure for the radio advertisement does not appear to meet the  
9 conduct prong. In addition, the costs associated with the radio advertisement, \$2,135, do not  
10 exceed the Act's \$5,000 contribution limit to political committees. 2 U.S.C. § 441a(a)(1)(C).  
11 Based on the cost of the communication, it does not appear that HRV made an excessive in-kind  
12 contribution.

13 Even if the cost of the alleged communications exceeded \$5,000, there is insufficient  
14 information that they were coordinated with the Angle Committee. The complaint's allegation  
15 that the radio advertisement was coordinated because Mr. Tarkanian was apparently an agent of  
16 the Angle Committee rests in part on Tarkanian's appearance at an event called "Gun Rights  
17 Night in Nevada," which was paid for and authorized by the Angle Committee, and at which  
18 both he and Ms. Angle spoke. The advertisement for the event lists Mr. Tarkanian as a guest  
19 speaker on the topic "Is Harry really for gun rights?" and lists key note speaker Angle as the "US  
20 Senate Candidate that will defeat Harry Reid." The allegation also relies on Mr. Tarkanian's  
21 hosting of "Tark Week," which consisted of seven days of campaigning for the Republican  
22 Party, including joining volunteers in calling people to ask them to support Reid's opponent, Ms.  
23 Angle. According to the complaint, "[e]ven apart from Tarkanian technically acting as an agent

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1 of Angle's campaign, HRV's communications are probably still 'coordinated communications'"  
2 because "Angle or her campaign have probably requested or suggested that HRV create its ads,  
3 been materially involved or had substantial discussions about the creation of their ads, or  
4 otherwise coordinated their activities."

5 To support its position that there was no coordination, the HRV Response attaches a  
6 sworn declaration from Mr. Tarkanian in which he avers that he does not hold, nor has he ever  
7 held a position within the Angle campaign. He further avers that he does not possess any  
8 authority from the Angle campaign to request or suggest that a communication be created,  
9 produced, or distributed; make or authorize any communication; or be materially involved in  
10 decisions or hold substantial discussions regarding communications. He further avers that he has  
11 not received any non-public information about the plans, projects, activities, or needs of the  
12 Angle campaign; and, to his knowledge, no agent of the Angle campaign has requested,  
13 suggested, or assented to any communication sponsored by HRV, nor had any material  
14 involvement in the creation, production, or distribution of any communication sponsored by  
15 HRV. *See* 11 C.F.R. § 109.3(b).

16 HRV and Mr. Tarkanian contend that campaigning for the Republican Party, joining  
17 volunteers at a phone bank, and serving as a guest speaker at an event do not prove that Mr.  
18 Tarkanian was an "agent" of the Angle campaign. They further maintain that the conduct  
19 standards of 11 C.F.R. § 109.21(d) have not otherwise been met, because the expenditures for the  
20 radio advertisement were not made at the request or suggestion of the Angle campaign, nor was  
21 there any material involvement, or substantial discussion regarding the advertisements between  
22 Mr. Tarkanian and the Angle Committee. *See* 11 C.F.R. § 109.3(b).

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1           Based on the complaint's reasons for alleging that Mr. Tarkanian was an "agent" for  
2 coordination purposes, and Mr. Tarkanian's sworn declaration, it does not appear that he met the  
3 definition of "agent" set forth at 11 C.F.R. § 109.3(b). Mr. Tarkanian's volunteering at a phone  
4 bank in support of Angle, speaking at an event also featuring the candidate, and registering a  
5 political committee to oppose Senator Reid do not, by themselves or in conjunction, show that he  
6 had actual authority to create or distribute communications on behalf of the Angle campaign.  
7 Nor do these activities provide a sufficient nexus to support the allegation that the Angle  
8 Committee "probably" made requests or suggestions, was materially involved in, or had  
9 substantial discussions about HRV's communications, an allegation specifically denied by Mr.  
10 Tarkanian. Given that Mr. Tarkanian was a 2010 Republican primary candidate, it is not  
11 surprising that he would oppose Senator Reid in the general election. Therefore, the  
12 Commission concludes there is no reason to believe Harry Reid Votes and Allison Van Over in  
13 her official capacity as treasurer, and Daniel J. Tarkanian violated 2 U.S.C. § 441a(a).

14           **2. Alleged Disclaimer Violation**

15           All public communications, as defined by 11 C.F.R. § 100.26, made by a political  
16 committee must include a disclaimer. 2 U.S.C. § 441d(a) and 11 C.F.R. § 110.11(a)(1). If the  
17 communication is not authorized by a candidate, an authorized political committee of a  
18 candidate, or its agents, it must clearly state the name and permanent street address, telephone  
19 number, or World Wide Web address of the person who paid for the communication, and that the  
20 communication is not authorized by any candidate or candidate's committee. 2 U.S.C.  
21 § 441d(a)(3) and 11 C.F.R. § 110.11(b)(3). A radio communication that is not authorized by a  
22 candidate or the candidate's authorized committee must also include an audio statement that  
23 "\_\_\_\_\_ is responsible for the content of this advertising" with the name of the political

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1 committee or other person paying for the communication in the blank. See 2 U.S.C. § 441d(d)(2)  
2 and 11 C.F.R. § 110.11(c)(4)(i).

3 HRV alleges that the disclaimer rules do not apply to the radio advertisement because it  
4 is not an electioneering communication given that it aired more than 60 days before the 2010  
5 general election. See 11 C.F.R. §§ 100.29 and 110.11(a)(4). HRV also alleges that even if the  
6 disclaimer rules do apply, they were not violated because the radio advertisement contained the  
7 statement "Harry Reid Votes is responsible for the content of this advertising" and included  
8 HRV's website address. *Id.*

9 A transcript of the radio advertisement is as follows:

10 SPOT ONE: WAGING WAR

11  
12 Right now, a war is being waged in Nevada. Liberals are funneling  
13 millions into our state to reelect their puppet Harry Reid. What Does  
14 Nevada say? NO MORE.  
15 NO MORE to Senator Reid's uncontrolled spending.  
16 NO MORE to his secret backroom meetings that will bankrupt future  
17 generations.  
18 NO MORE to his taxes on hardworking families and businesses.  
19 Protect Nevada today by visiting HarryReidVotes.com to learn 1001  
20 reasons to fire Harry Reid.  
21 Harry Reid Votes is responsible for the content of this advertisement.

22 See [http://www.advocacyink.com/posts/independent-political-committee-launches-statewide-  
radio-buy-harryreidvotescom-to-run-1st-in-s.com](http://www.advocacyink.com/posts/independent-political-committee-launches-statewide-<br/>23 radio-buy-harryreidvotescom-to-run-1st-in-s.com) (last accessed March 16, 2011).

24 The disclaimer for this radio advertisement, which is a public communication, does not  
25 fully comply with the Act and the Commission's regulations. Because HRV was a registered  
26 non-connected political committee when it ran this advertisement (which was before it notified  
27 the Commission that it considered its registration an error), the disclaimer should have included

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1 its permanent street address, that it paid for the communication, and that the communication was  
2 not authorized by any candidate or candidate's committee. 2 U.S.C. § 441d(a)(3) and 11 C.F.R.  
3 § 110.11(b)(3). It apparently complied with the audio statement required for radio  
4 communications, and included its name and website address. See 2 U.S.C. § 441d(d)(2) and  
5 11 C.F.R. § 110.11(c)(4)(i). Based on the relatively low cost of the radio advertisement, \$2,135,  
6 the Commission does not believe it would be a good use of its resources to pursue the apparent  
7 2 U.S.C. § 441d(a) violation to conciliation by itself. Therefore, the Commission exercises its  
8 prosecutorial discretion to dismiss the allegation that Harry Reid Votes and Allison Van Over in  
9 her official capacity as treasurer violated 2 U.S.C. § 441d(a). See *Heckler v. Chaney*, 470 U.S.  
10 821 (1985).

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**VIA FIRST CLASS MAIL & FACSIMILE**

**Fax No.: (202) 672-5399**

Cleta Mitchell, Esq.  
Foley & Lardner LLP  
3000 K Street, NW, Suite 600  
Washington, DC 20007-5109

July 15, 2011

RE: MUR 6377  
Friends of Sharron Angle and Alan Mills,  
in his official capacity as treasurer  
Sharron E. Angle

Dear Ms. Mitchell:

On September 23, 2010, the Federal Election Commission notified your clients, Friends of Sharron Angle and Alan Mills, in his official capacity as treasurer ("the Committee"), and Sharron E. Angle, 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 your clients, that there is no reason to believe Friends of Sharron Angle and Alan Mills, in his official capacity as treasurer, and Sharron E. Angle violated 2 U.S.C. § 441a(f). 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 Christine C. Gallagher, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

Susan L. Lebeaux  
Acting Deputy Associate General Counsel

Enclosure  
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS: Sharron Angle for Congress and Alan B. Mills, MUR 6377**  
**in his official capacity as treasurer**  
**Sharron E. Angle**

**I. BACKGROUND**

This matter was generated by a complaint filed with the Federal Election Commission by Sam Lieberman, Chair, Nevada State Democratic Party. See 2 U.S.C. § 437g(a)(1). According to the complaint, during the 2010 campaign for Nevada’s U.S. Senate seat, Friends of Sharron Angle and Alan B. Mills, in his official capacity as treasurer (“the Angle Committee”), and Sharron E. Angle, accepted excessive in-kind contributions from Harry Reid Votes and Allison Van Over, in her official capacity as treasurer (“HRV”), through their purported agent, Daniel J. “Danny” Tarkanian, in the form of coordinated communications that expressly advocated against Ms. Angle’s general election opponent, Senator Harry Reid.<sup>1</sup> See 2 U.S.C. §§ 441a(a)(7)(B)(i) and 441a(f). Mr. Tarkanian had previously lost the 2010 Republican Senate primary in Nevada to Ms. Angle. After his loss, Mr. Tarkanian created and operated HRV. The Angle Committee and Ms. Angle deny the allegations of the complaint.

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Factual Background**

According to the Nevada Secretary of State’s website, HRV filed a Non Profit Articles of Incorporation on August 18, 2010, describing as its purpose “to provide public information on federal political races.” On August 20, 2010, HRV filed a Notice of Section 527 Status with the Internal Revenue Service (“IRS”), describing its purpose the same way, and it has filed

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<sup>1</sup> Harry Reid Votes, Harry Reid Votes, Inc., and [www.harryreidvotes.com](http://www.harryreidvotes.com) are the same entity. “HRV” refers to all three designations, unless otherwise specified.

1 disclosure reports with the IRS under Section 527. *See* 26 U.S.C. § 527. On August 24, 2010,  
2 HRV filed a Statement of Organization with the Commission, registering as a non-connected  
3 political committee with the purpose of opposing Senator Harry Reid. *See*  
4 [http://query.nictusa.com/cgi-bin/fecimg/?\\_10030413054+0](http://query.nictusa.com/cgi-bin/fecimg/?_10030413054+0).

5 HRV has filed 24-Hour and 48-Hour Independent Expenditure Reports, and a 2010  
6 October Quarterly Report with the Commission disclosing receipts of contributions and  
7 independent expenditures covering the period of August 1, 2010, through October 19, 2010, as a  
8 person or group other than a political committee. *See* 2 U.S.C. § 434(c). HRV has not filed any  
9 disclosure reports of receipts and disbursements with the Commission as a political committee;  
10 the Reports Analysis Division (“RAD”) has sent notices concerning HRV’s non-filed reports.

11 *See* [http://query.nictusa.com/cgi-bin/fecimg/?\\_10030484425+0](http://query.nictusa.com/cgi-bin/fecimg/?_10030484425+0); *see also*  
12 [http://query.nictusa.com/cgi-bin/fecimg/?\\_11030574539+0](http://query.nictusa.com/cgi-bin/fecimg/?_11030574539+0).

13 The complaint alleges that Danny Tarkanian was “apparently an agent of the Angle  
14 campaign, and yet has also registered and is operating a political committee, HRV, in order to  
15 attack Angle’s opponent [in Nevada’s 2010 U.S. Senate race], Senator Harry Reid.” Therefore,  
16 the complaint alleges, HRV’s expenditures for communications, including a radio advertisement  
17 and “planned” television advertisements attacking Senator Reid, constitute coordinated  
18 communications, and thus excessive contributions made to Ms. Angle and the Angle Committee.

19 The Angle Committee and Sharron E. Angle deny that any of HRV’s public  
20 communications were coordinated.

21 **B. Legal Analysis**

22 Expenditures made by any person in cooperation, consultation, or concert, with, or at the  
23 request or suggestion of, a candidate, his or her authorized political committees, or their agents,

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1 shall be considered to be a contribution to such candidate. 2 U.S.C. § 441a(a)(7)(B)(i). The  
2 Commission's regulations provide that any expenditure for a communication is considered an in-  
3 kind contribution to a campaign if it is (1) paid for by an entity other than the campaign,  
4 (2) meets certain content standards, including electioneering communications, public  
5 communications that contain express advocacy, or public communications that clearly identify a  
6 candidate for the Senate within 90 days of an election; and (3) meets certain conduct standards.<sup>2</sup>  
7 See 11 C.F.R. §§ 109.20 and 109.21. For the purpose of coordinated communications, an  
8 "agent" is defined as any person who has actual authority, either express or implied, to engage in  
9 certain enumerated activities on behalf of a federal candidate, including, *inter alia*, to request or  
10 suggest that a communication be created, produced, or distributed; to make or authorize a  
11 communication that meets one or more of the content standards set forth in 11 C.F.R.  
12 § 109.21(c); to request or suggest that any other person create, produce, or distribute any  
13 communication; or to be materially involved in decisions regarding the communication's  
14 content, intended audience, means or mode, specific media outlet, timing or frequency, or size or  
15 prominence of printed communication, or duration of a communication by means of broadcast,  
16 cable or satellite. 11 C.F.R. § 109.3(b)(1)-(6).

17 HRV filed FEC Form 5, Reports of Independent Expenditures Made and Contributions  
18 Received, disclosing contributions from individuals and corporations in the amount of \$46,550  
19 and independent expenditures of \$39,826.24, all of which were described as opposing candidate  
20 Harry Reid. Included in those expenditures were payments of \$2,135 to Red Clay

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<sup>2</sup> The Commission recently revised its coordination communications content prong (11 C.F.R. § 109.21(c)(3) and (c) (5)) in response to the Circuit Court's decision in *Shays v. FEC*, 528 F.3d 914 (D.C. Cir. 2008). The new regulations were effective December 1, 2010. See Explanation and Justification, *Coordinated Communications*, 75 Fed. Reg. 55947 and 55952 (September 15, 2010). Because the activity in this matter occurred prior to December 1, 2010, the prior regulation applies. In any event, the coordination analysis includes only 11 C.F.R. § 109.21(c)(4)(i), not the revised subsections.

1 Communications, Inc. for a radio advertisement on September 1, 2010. It does not appear that  
2 HRV ran any of the television advertisements it allegedly planned to run at the time of the  
3 complaint.

4 The radio advertisement met the payment and content prongs of the coordination  
5 regulations because it was paid for by HRV, an entity other than the campaign, and consisted of  
6 a public communication referring to a clearly identified Senate candidate publicly disseminated  
7 in the candidate's jurisdiction 90 days or fewer before the general election. *See* 11 C.F.R.  
8 §§ 109.21(c)(4)(i), and 100.26. However, based on the complaint, the Angle Committee's  
9 response, and as explained below, HRV's expenditure for the radio advertisement does not  
10 appear to meet the conduct prong. In addition, the costs associated with the radio advertisement,  
11 \$2,135, do not exceed the Act's \$5,000 contribution limit to political committees, and HRV did  
12 not make any other contributions to the Angle Committee that would make this alleged in-kind  
13 contribution excessive. 2 U.S.C. §§ 441a(a)(1)(C) and 441a(f).

14 Even if the cost of the alleged communications exceeded \$5,000, there is insufficient  
15 information that they were coordinated with the Angle Committee. The complaint's allegation  
16 that the radio advertisement was coordinated because Mr. Tarkanian was apparently an agent of  
17 the Angle Committee rests in part on Tarkanian's appearance at an event called "Gun Rights  
18 Night in Nevada," which was paid for and authorized by the Angle Committee, and at which  
19 both he and Ms. Angle spoke. The advertisement for the event lists Mr. Tarkanian as a guest  
20 speaker on the topic "Is Harry really for gun rights?" and lists key note speaker Angle as the "US  
21 Senate Candidate that will defeat Harry Reid." The allegation also relies on Mr. Tarkanian's  
22 hosting of "Tark Week," which consisted of seven days of campaigning for the Republican  
23 Party, including joining volunteers in calling people to ask them to support Reid's opponent, Ms.

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1 Angle. According to the complaint, “[e]ven apart from Tarkanian technically acting as an agent  
2 of Angle’s campaign, HRV’s communications are probably still ‘coordinated communications’”  
3 because “Angle or her campaign have probably requested or suggested that HRV create its ads,  
4 been materially involved or had substantial discussions about the creation of their ads, or  
5 otherwise coordinated their activities.” The Angle Committee and Ms. Angle deny that there  
6 was any coordination involving the HRV communications, and contend that Mr. Tarkanian’s  
7 appearance as a guest speaker at a campaign event does not meet the conduct prong’s evidentiary  
8 standard under 11 C.F.R. § 109.21(d).

9 Based on the complaint’s reasons for alleging that Mr. Tarkanian was an “agent” for  
10 coordination purposes, and information in the Commission’s possession, it does not appear that  
11 he meets the definition of “agent” set forth at 11 C.F.R. § 109.3(b). Mr. Tarkanian’s  
12 volunteering at a phone bank in support of Angle, speaking at an event also featuring the  
13 candidate, and registering a political committee to oppose Senator Reid do not, by themselves or  
14 in conjunction, show that he had actual authority to create or distribute communications on  
15 behalf of the Angle campaign. Nor do these activities provide a sufficient nexus to support the  
16 allegation that the Angle Committee “probably” made requests or suggestions, was materially  
17 involved in, or had substantial discussions about HRV’s communications, an allegation  
18 specifically denied by the Angle Committee. Given that Mr. Tarkanian was a 2010 Republican  
19 primary candidate, it is not surprising that he would oppose Senator Reid in the general election.

20 Therefore, there is no reason to believe that Friends of Sharron Angle and Alan B. Mills,  
21 in his official capacity as treasurer, and Sharron E. Angle violated 2 U.S.C. § 441a(f).

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**VIA FIRST CLASS MAIL & FACSIMILE**

**Fax No.: (202) 429-3301**

Matthew T. Sanderson, Esq.  
Caplin & Drysdale, Chartered  
One Thomas Circle, NW, Suite 1100  
Washington, DC 20005

July 15, 2011

RE: MUR 6377  
Harry Reid Votes and Allison Van Over,  
in her official capacity as treasurer  
Daniel J. Tarkanian

Dear Mr. Sanderson:

On September 23, 2010, the Federal Election Commission notified your clients, Harry Reid Votes and Allison Van Over, in her official capacity as treasurer ("the Committee"), and Daniel J. Tarkanian, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). On June 14, 2011, the Commission found, on the basis of the information in the complaint, and information provided by your clients, that there is no reason to believe Harry Reid Votes and Allison Van Over, in her official capacity as treasurer, and Daniel J. Tarkanian violated 2 U.S.C. § 441a(a). In addition, on June 14, 2011, there were an insufficient number of votes to find reason to believe the Committee violated 2 U.S.C. § 432(e)(4). Further, on June 14, 2011, the Commission voted to dismiss the allegations that the Committee violated 2 U.S.C. § 441d(a). Accordingly, the Commission closed its file in this matter.

Based on the information before the Commission concerning MUR 6377, it appears that the Committee paid for a radio advertisement airing on September 1, 2010, which contained disclaimers that did not include the Committee's permanent street address, that it paid for the communication, and that the communication was not authorized by any candidate or candidate's committee. The Act and Commission regulations require all public communications, as defined by 11 C.F.R. § 100.26, to contain a disclaimer including, *inter alia*, the name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication, and when the communication is not authorized by a candidate, an authorized political committee of a candidate, or its agents, to state that the communication is not authorized by a candidate or candidate's committee. 2 U.S.C. § 441d(a)(3) and 11 C.F.R. § 110.11(b)(3). The Commission cautions the Committee to take steps to ensure that it complies with all disclaimer requirements in accordance with the Act and Commission regulations.

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,

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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 findings with respect to the 2 U.S.C. §§ 441a(a) and 441d(a) allegations is enclosed. A Statement of Reasons regarding the 2 U.S.C. § 432(e)(4) allegation will follow.

If you have any questions, please contact Christine C. Gallagher, the attorney assigned to this matter at (202) 694-1650.

Sincerely,



Susan L. Lebeaux  
Acting Deputy Associate General Counsel

Enclosed:  
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS: Harry Reid Votes and Allison Van Over, MUR 6377**  
**in her official capacity as treasurer**  
**Daniel J. Tarkanian**

**I. BACKGROUND**

This matter was generated by a complaint filed with the Federal Election Commission by Sam Lieberman, Chair, Nevada State Democratic Party. See 2 U.S.C. § 437g(a)(1). According to the complaint, during the 2010 campaign for Nevada’s U.S. Senate seat, Harry Reid Votes and Allison Van Over, in her official capacity as treasurer (“HRV”), made excessive in-kind contributions to Friends of Sharron Angle and Alan B. Mills, in his official capacity as treasurer (“the Angle Committee”), and Sharron E. Angle, through their purported agent, Daniel J. “Danny” Tarkanian, in the form of coordinated communications that expressly advocated against Ms. Angle’s general election opponent, Senator Harry Reid.<sup>1</sup> See 2 U.S.C. § 441a(a)(7)(B)(i). Mr. Tarkanian had previously lost the 2010 Republican Senate primary in Nevada to Ms. Angle. After his loss, Mr. Tarkanian created and operated HRV. The complaint further alleges that the title “Harry Reid Votes” violates 2 U.S.C. § 432(e)(4) of the Federal Election Campaign Act of 1971, as amended, (“the Act”), which prohibits unauthorized committees from using the name of a federal candidate in its title. Last, the complaint alleges that HRV’s radio advertisement that aired on September 1, 2010, did not include the appropriate disclaimer because it is a public communication and did not state that it was “Paid for by Harry Reid Votes,” did not include its address, phone number, or web address, nor a statement whether it was authorized by any candidate. See 2 U.S.C. § 441d. HRV and Mr. Tarkanian deny the allegations of the complaint.

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<sup>1</sup> Harry Reid Votes, Harry Reid Votes, Inc., and [www.harryreidvotes.com](http://www.harryreidvotes.com) are the same entity. “HRV” refers to all three designations, unless otherwise specified.

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Factual Background**

3 According to the Nevada Secretary of State's website, HRV filed a Non Profit Articles of  
4 Incorporation on August 18, 2010, describing as its purpose "to provide public information on  
5 federal political races." On August 20, 2010, HRV filed a Notice of Section 527 Status with the  
6 Internal Revenue Service ("IRS"), describing its purpose the same way, and it has filed  
7 disclosure reports with the IRS under Section 527. *See* 26 U.S.C. § 527. On August 24, 2010,  
8 HRV filed a Statement of Organization with the Commission, registering as a non-connected  
9 political committee with the purpose of opposing Senator Harry Reid. *See*  
10 [http://query.nictusa.com/cgi-bin/fecimg/?\\_10030413054+0](http://query.nictusa.com/cgi-bin/fecimg/?_10030413054+0). After the Commission notified  
11 HRV that the instant complaint had been filed against it, HRV submitted a letter to the  
12 Commission stating that it had filed the Statement of Organization in error, and that it is not a  
13 political action committee or independent expenditure committee. Due to the ongoing  
14 enforcement matter and consistent with usual practice, HRV's letter was treated as a termination  
15 request and denied pending the resolution of the MUR. Counsel for HRV then submitted a letter  
16 stating that HRV's previous letter was not a request to terminate, but rather was meant to inform  
17 the Commission that its Statement of Organization was "void" and that it would not therefore be  
18 filing disclosure reports with the Commission.

19 HRV has filed 24-Hour and 48-Hour Independent Expenditure Reports, and a 2010  
20 October Quarterly Report with the Commission disclosing receipts of contributions and  
21 independent expenditures covering the period of August 1, 2010, through October 19, 2010, as a  
22 person or group other than a political committee. *See* 2 U.S.C. § 434(c). HRV has not filed any  
23 disclosure reports of receipts and disbursements with the Commission as a political committee;

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1 the Reports Analysis Division (“RAD”) has sent notices concerning HRV’s non-filed reports.

2 See [http://query.nictusa.com/cgi-bin/fecimg/?\\_10030484425+0](http://query.nictusa.com/cgi-bin/fecimg/?_10030484425+0); see also

3 [http://query.nictusa.com/cgi-bin/fecimg/?\\_11030574539+0](http://query.nictusa.com/cgi-bin/fecimg/?_11030574539+0).

4 According to the complaint, Danny Tarkanian was “apparently an agent of the Angle  
5 campaign, and yet has also registered and is operating a political committee, HRV, in order to  
6 attack Angle’s opponent [in Nevada’s 2010 U.S. Senate race], Senator Harry Reid.” Therefore,  
7 the complaint alleges, HRV’s expenditures for communications, including a radio advertisement  
8 and “planned” television advertisements attacking Senator Reid, constitute coordinated  
9 communications, and thus excessive contributions made to Ms. Angle and the Angle Committee.  
10 The complaint further alleges that the disclaimer on HRV’s radio advertisement was deficient,  
11 and that HRV impermissibly uses the name of a federal candidate in its title.

12 HRV and Mr. Tarkanian submitted a joint response denying that Mr. Tarkanian was an  
13 “agent,” as defined by the Commission’s regulations, of the Angle Committee because he did not  
14 possess actual authority to represent the Angle campaign within the meaning of 11 C.F.R.  
15 § 109.3(b). The HRV Response also states that HRV’s radio advertisement contained an  
16 adequate disclaimer, and the presence of Harry Reid’s name in its title does not violate the  
17 prohibition against any unauthorized political committee using the name of any candidate in its  
18 name because it is not a federal political committee.

19 **B. Legal Analysis**

20 **1. Coordination Allegations**

21 Expenditures made by any person in cooperation, consultation, or concert, with, or at the  
22 request or suggestion of, a candidate, his or her authorized political committees, or their agents,  
23 shall be considered to be a contribution to such candidate. 2 U.S.C. § 441a(a)(7)(B)(i). The

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1 Commission's regulations provide that any expenditure for a communication is considered an in-  
2 kind contribution to a campaign if it is (1) paid for by an entity other than the campaign,  
3 (2) meets certain content standards, including electioneering communications, public  
4 communications that contain express advocacy, or public communications that clearly identify a  
5 candidate for the Senate within 90 days of an election; and (3) meets certain conduct standards.<sup>2</sup>  
6 See 11 C.F.R. §§ 109.20 and 109.21. For the purpose of coordinated communications, an  
7 "agent" is defined as any person who has actual authority, either express or implied, to engage in  
8 certain enumerated activities on behalf of a federal candidate, including, *inter alia*, to request or  
9 suggest that a communication be created, produced, or distributed; to make or authorize a  
10 communication that meets one or more of the content standards set forth in 11 C.F.R.  
11 § 109.21(c); to request or suggest that any other person create, produce, or distribute any  
12 communication; or to be materially involved in decisions regarding the communication's  
13 content, intended audience, means or mode, specific media outlet, timing or frequency, or size or  
14 prominence of printed communication, or duration of a communication by means of broadcast,  
15 cable or satellite. 11 C.F.R. § 109.3(b)(1)-(6).

16 HRV filed FEC Form 5, Reports of Independent Expenditures Made and Contributions  
17 Received, disclosing contributions from individuals and corporations in the amount of \$46,550  
18 and independent expenditures of \$39,826.24, all of which were described as opposing candidate  
19 Harry Reid. Included in those expenditures were payments of \$2,135 to Red Clay  
20 Communications, Inc. for a radio advertisement on September 1, 2010. It does not appear that

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<sup>2</sup> The Commission recently revised its coordination communications content prong (11 C.F.R. § 109.21(c)(3) and (c) (5) in response to the Circuit Court's decision in *Shays v. FEC*, 528 F.3d 914 (D.C. Cir. 2008). The new regulations were effective December 1, 2010. See Explanation and Justification, *Coordinated Communications*, 75 Fed. Reg. 55947 and 55952 (September 15, 2010). Because the activity in this matter occurred prior to December 1, 2010, the prior regulation applies. In any event, the coordination analysis includes only 11 C.F.R. § 109.21(c)(4)(i), not the revised subsections.

1 HRV ran any of the television advertisements it allegedly planned to run at the time of the  
2 complaint.

3 The radio advertisement met the payment and content prongs of the coordination  
4 regulations because it was paid for by HRV, an entity other than the campaign, and consisted of  
5 a public communication referring to a clearly identified Senate candidate publicly disseminated  
6 in the candidate's jurisdiction 90 days or fewer before the general election. *See* 11 C.F.R.  
7 §§ 109.21(c)(4)(i), and 100.26. However, based on the complaint and the response and as  
8 explained below, HRV's expenditure for the radio advertisement does not appear to meet the  
9 conduct prong. In addition, the costs associated with the radio advertisement, \$2,135, do not  
10 exceed the Act's \$5,000 contribution limit to political committees. 2 U.S.C. § 441a(a)(1)(C).  
11 Based on the cost of the communication, it does not appear that HRV made an excessive in-kind  
12 contribution.

13 Even if the cost of the alleged communications exceeded \$5,000, there is insufficient  
14 information that they were coordinated with the Angle Committee. The complaint's allegation  
15 that the radio advertisement was coordinated because Mr. Tarkanian was apparently an agent of  
16 the Angle Committee rests in part on Tarkanian's appearance at an event called "Gun Rights  
17 Night in Nevada," which was paid for and authorized by the Angle Committee, and at which  
18 both he and Ms. Angle spoke. The advertisement for the event lists Mr. Tarkanian as a guest  
19 speaker on the topic "Is Harry really for gun rights?" and lists key note speaker Angle as the "US  
20 Senate Candidate that will defeat Harry Reid." The allegation also relies on Mr. Tarkanian's  
21 hosting of "Tark Week," which consisted of seven days of campaigning for the Republican  
22 Party, including joining volunteers in calling people to ask them to support Reid's opponent, Ms.  
23 Angle. According to the complaint, "[e]ven apart from Tarkanian technically acting as an agent

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1 of Angle's campaign, HRV's communications are probably still 'coordinated communications'"  
2 because "Angle or her campaign have probably requested or suggested that HRV create its ads,  
3 been materially involved or had substantial discussions about the creation of their ads, or  
4 otherwise coordinated their activities."

5 To support its position that there was no coordination, the HRV Response attaches a  
6 sworn declaration from Mr. Tarkanian in which he avers that he does not hold, nor has he ever  
7 held a position within the Angle campaign. He further avers that he does not possess any  
8 authority from the Angle campaign to request or suggest that a communication be created,  
9 produced, or distributed; make or authorize any communication; or be materially involved in  
10 decisions or hold substantial discussions regarding communications. He further avers that he has  
11 not received any non-public information about the plans, projects, activities, or needs of the  
12 Angle campaign; and, to his knowledge, no agent of the Angle campaign has requested,  
13 suggested, or assented to any communication sponsored by HRV, nor had any material  
14 involvement in the creation, production, or distribution of any communication sponsored by  
15 HRV. *See* 11 C.F.R. § 109.3(b).

16 HRV and Mr. Tarkanian contend that campaigning for the Republican Party, joining  
17 volunteers at a phone bank, and serving as a guest speaker at an event do not prove that Mr.  
18 Tarkanian was an "agent" of the Angle campaign. They further maintain that the conduct  
19 standards of 11 C.F.R. § 109.21(d) have not otherwise been met, because the expenditures for the  
20 radio advertisement were not made at the request or suggestion of the Angle campaign, nor was  
21 there any material involvement, or substantial discussion regarding the advertisements between  
22 Mr. Tarkanian and the Angle Committee. *See* 11 C.F.R. § 109.3(b).

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1           Based on the complaint's reasons for alleging that Mr. Tarkanian was an "agent" for  
2 coordination purposes, and Mr. Tarkanian's sworn declaration, it does not appear that he met the  
3 definition of "agent" set forth at 11 C.F.R. § 109.3(b). Mr. Tarkanian's volunteering at a phone  
4 bank in support of Angle, speaking at an event also featuring the candidate, and registering a  
5 political committee to oppose Senator Reid do not, by themselves or in conjunction, show that he  
6 had actual authority to create or distribute communications on behalf of the Angle campaign.  
7 Nor do these activities provide a sufficient nexus to support the allegation that the Angle  
8 Committee "probably" made requests or suggestions, was materially involved in, or had  
9 substantial discussions about HRV's communications, an allegation specifically denied by Mr.  
10 Tarkanian. Given that Mr. Tarkanian was a 2010 Republican primary candidate, it is not  
11 surprising that he would oppose Senator Reid in the general election. Therefore, the  
12 Commission concludes there is no reason to believe Harry Reid Votes and Allison Van Over in  
13 her official capacity as treasurer, and Daniel J. Tarkanian violated 2 U.S.C. § 441a(a).

## 14           2.       Alleged Disclaimer Violation

15           All public communications, as defined by 11 C.F.R. § 100.26, made by a political  
16 committee must include a disclaimer. 2 U.S.C. § 441d(a) and 11 C.F.R. § 110.11(a)(1). If the  
17 communication is not authorized by a candidate, an authorized political committee of a  
18 candidate, or its agents, it must clearly state the name and permanent street address, telephone  
19 number, or World Wide Web address of the person who paid for the communication, and that the  
20 communication is not authorized by any candidate or candidate's committee. 2 U.S.C.  
21 § 441d(a)(3) and 11 C.F.R. § 110.11(b)(3). A radio communication that is not authorized by a  
22 candidate or the candidate's authorized committee must also include an audio statement that  
23 "\_\_\_\_\_ is responsible for the content of this advertising" with the name of the political

1 committee or other person paying for the communication in the blank. See 2 U.S.C. § 441d(d)(2)  
2 and 11 C.F.R. § 110.11(c)(4)(i).

3 HRV alleges that the disclaimer rules do not apply to the radio advertisement because it  
4 is not an electioneering communication given that it aired more than 60 days before the 2010  
5 general election. See 11 C.F.R. §§ 100.29 and 110.11(a)(4). HRV also alleges that even if the  
6 disclaimer rules do apply, they were not violated because the radio advertisement contained the  
7 statement "Harry Reid Votes is responsible for the content of this advertising" and included  
8 HRV's website address. *Id.*

9 A transcript of the radio advertisement is as follows:

10 SPOT ONE: WAGING WAR

11  
12 Right now, a war is being waged in Nevada. Liberals are funneling  
13 millions into our state to reelect their puppet Harry Reid. What Does  
14 Nevada say? NO MORE.  
15 NO MORE to Senator Reid's uncontrolled spending.  
16 NO MORE to his secret backroom meetings that will bankrupt future  
17 generations.  
18 NO MORE to his taxes on hardworking families and businesses.  
19 Protect Nevada today by visiting HarryReidVotes.com to learn 1001  
20 reasons to fire Harry Reid.  
21 Harry Reid Votes is responsible for the content of this advertisement.

22 See [http://www.advocacyink.com/posts/independent-political-committee-launches-statewide-  
radio-buy-harryreidvotescom-to-run-1st-in-s.com](http://www.advocacyink.com/posts/independent-political-committee-launches-statewide-<br/>23 radio-buy-harryreidvotescom-to-run-1st-in-s.com) (last accessed March 16, 2011).

24 The disclaimer for this radio advertisement, which is a public communication, does not  
25 fully comply with the Act and the Commission's regulations. Because HRV was a registered  
26 non-connected political committee when it ran this advertisement (which was before it notified  
27 the Commission that it considered its registration an error), the disclaimer should have included

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1 its permanent street address, that it paid for the communication, and that the communication was  
2 not authorized by any candidate or candidate's committee. 2 U.S.C. § 441d(a)(3) and 11 C.F.R.  
3 § 110.11(b)(3). It apparently complied with the audio statement required for radio  
4 communications, and included its name and website address. See 2 U.S.C. § 441d(d)(2) and  
5 11 C.F.R. § 110.11(c)(4)(i). Based on the relatively low cost of the radio advertisement, \$2,135,  
6 the Commission does not believe it would be a good use of its resources to pursue the apparent  
7 2 U.S.C. § 441d(a) violation to conciliation by itself. Therefore, the Commission exercises its  
8 prosecutorial discretion to dismiss the allegation that Harry Reid Votes and Allison Van Over in  
9 her official capacity as treasurer violated 2 U.S.C. § 441d(a). See *Heckler v. Chaney*, 470 U.S.  
10 821 (1985).

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