

Late Independent Expenditure Reports Can Mean Big Penalties from the FEC

March 2010

On January 22, 2010, the Federal Election Commission (FEC) accepted the signed conciliation agreement and civil penalty submitted on behalf of the National Right to Life Political Action Committee (Committee) and Carol Tobias, in her official capacity as treasurer, in settlement of violations of the independent expenditure reporting provisions of the Federal Election Campaign Act of 1971, as amended.

The Committee made 1,545 independent expenditures totaling \$3,718,909 from January 1, 2003, through the November 2, 2004 general election, which were at issue. By failing to timely file 24- and 48-Hour Notices of Independent Expenditures with regard to these independent expenditures, the Committee violated the federal reporting requirements. The Committee filed the Notices in an untimely fashion because, according to the agreement, it used as the event that started the 24- or 48-hour clock the date of the check to the vendor for the independent expenditure, rather than the date the independent expenditure was distributed or disseminated to the public. As a result of these violations, the Committee agreed to pay a \$99,000 civil penalty to the FEC.

It is important not only to remember to file 24- and 48-Hour Notices, but also to use the correct trigger date. An independent expenditure is an expenditure for a communication that expressly advocates the election or defeat of a clearly identified candidate and is not coordinated with a candidate, candidate's committee, party committee or their agents. Depending on the amount and timing of the independent expenditure, there are different reporting requirements. Once independent expenditures reach a threshold aggregate amount of \$1,000 near an election or \$10,000 farther from

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an election, then 24- and 48-hour reporting requirements are triggered.

Any independent expenditure aggregating \$1,000 or more for any given election made after the 20th day but more than 24 hours before the day of an election must be reported to the FEC within 24 hours after the expenditure is made. A 24-Hour Notice is required for each additional \$1,000 in independent expenditures. Also, any independent expenditure aggregating \$10,000 or more for any given election, at any time during a calendar year, up to and including the 20th day before an election, must be reported to the FEC within 48 hours.

For both the 24- and 48-Hour Notices, the date that a communication is publicly disseminated or distributed triggers the 24- or 48-hour reporting requirements. The Committee used the incorrect dates for their decisions about the reports, which turned out to be a \$99,000 mistake.

*Not admitted to the District of Columbia and/or Virginia Bar. Supervised by principals of the firm.