

FEC Fines Charity for Electioneering Reporting and Disclaimer Violations

July 2016

By Michael E. Toner and Karen E. Trainer

The Federal Election Commission (FEC) recently released documents from an enforcement case involving a 501(c)(3) entity's violation of rules for electioneering communications. Under FEC regulations, an electioneering communication is a broadcast, cable, or satellite communication that (1) refers to a clearly identified candidate for Federal office; (2) is made within 60 days before a general election or 30 days before a primary election; and (3) is targeted to the relevant electorate. Electioneering communications are subject to reporting and disclaimer requirements.

In March and April of 2014, the Southern Alliance for Clean Energy aired television ads referring to Senator Kay Hagan. Some of the ads aired within 30 days of North Carolina's primary and qualified as electioneering communications. The ads contained an incomplete disclaimer and were not disclosed to the FEC.

The Southern Alliance for Clean Energy reported the violations to the FEC and implemented policies to prevent similar issues in the future. As part of the settlement, the Southern Alliance for Clean Energy will pay a civil penalty of \$19,000.

This settlement underscores the need to check all grassroots lobbying ads in election years for compliance not only with the lobbying laws of the given jurisdiction but also with the campaign finance laws if the ads mention or feature a candidate. The federal 30/60-day windows are fairly easy to recognize and apply only to radio and tv ads, but the states regulate a wide variety of time periods and media with their electioneering communications. Even if the ads relate

Authors

Michael E. Toner
Partner
202.719.7545
mtoner@wiley.law

Karen E. Trainer
Senior Reporting Specialist
202.719.4078
ktrainer@wiley.law

Practice Areas

Election Law & Government Ethics

directly to pending legislation, they could trigger reporting and disclaimer obligations.