



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 7, 2011

MEMORANDUM

TO: Patricia Carmona
Chief Compliance Officer

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Audit Division

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SUBJECT: Interim Audit Report on the National Right to Live Political Action
Committee (LRA # 812)

I. INTRODUCTION

The Office of General Counsel ("OGC") has reviewed the Interim Audit Report ("Proposed Report") on the National Right to Life Political Action Committee ("NRL PAC" or "Committee"). We concur with Finding 1 (Misstatement of Financial Activity) and Finding 2 (Disclosure of Occupation and Name of Employer) in the Proposed Report. In its cover memorandum, the Audit Division requested a legal analysis of Finding 3 (Duplicate Filing of Independent Expenditure Notices). We analyze this issue below.¹ If



you have any questions, please contact Margaret J. Forman, the attorney assigned to this audit.

II. DUPLICATE FILING OF ITEMIZED INDEPENDENT EXPENDITURES DOES NOT VIOLATE 24/48-HOUR NOTICE RULE

The Committee filed duplicate itemized independent expenditures in its 24/48-hour notices, resulting in 935 more independent expenditures disclosed than required pursuant to 2 U.S.C. § 434(g) and 11 C.F.R. §§ 104.4(b)(2) and 104.4(c). By "duplicate," we mean, for the most part, two separate scenarios. First, we understand that in some instances, the Committee simply filed the same notice of a single independent expenditure at least twice, and sometimes more often. Second, in a number of other instances, the Committee would file a notice of an independent expenditure; then it would file a notice of that expenditure and a subsequent one; then it would file a notice of the first two and a third, later one; etc. None of the duplicate filings resulted in substantive changes.

The Committee told the auditors that it filed the duplicate itemized independent expenditures in its 24/48-hour notices because it did not completely understand how the Committee's campaign software worked.

Committees aggregating \$10,000 or more in independent expenditures with respect to a given calendar year up to and including the 20th day before an election must file a notice with the Commission within 48 hours. 2 U.S.C. § 434(g)(2)(A); 11 C.F.R. § 104.4(b)(2). For each subsequent time that a committee's independent expenditures aggregate \$10,000, the committee must likewise file another "48-hour notice" disclosing the independent expenditures, up to and including the 20th day before the election. 2 U.S.C. § 434(g)(2)(B); 11 C.F.R. § 104.4(b)(2). Less than 20 days before the election, the committee must disclose independent expenditures aggregating \$1,000 within 24 hours, by filing similar notices. Each time the committee's independent expenditures aggregate \$1,000, the committee must continue to file these "24-hour notices" up to 24 hours before the day of the election. 2 U.S.C. § 434(g)(1)(A)&(B); 11 C.F.R. § 104.4(c).

All of the Act's reporting requirements share with these requirements for 24/48-hour notices of independent expenditures two basic characteristics. First, required reports must be filed on time. 11 C.F.R. § 104.4(b)(2)&(c). Second, they must be both accurate, and complete: accurate in the sense that the information reported must be factually correct, and complete in the sense that no information required to be reported may be omitted. See 11 C.F.R. § 104.4(f) (itemized independent expenditures in 24/48-hour notices must be aggregated in a specific manner); 11 C.F.R. § 104.4(b)(2)&(c) and § 104.3(b)(3)(vii) (itemized independent expenditures in 24/48-hour notices must include specified information, including the date, purpose, and whether in support/opposition to a specific candidate).

In this case, there is no indication that substantially any of the independent expenditures at issue were disclosed untimely. Nor are any of the individual notices filed inaccurate, in the sense that they contain statements that are not factually correct. They merely re-report information that the committee has already disclosed in the same type of report.

The duplicate reports are problematic in that they create a confused and cluttered public record. Someone who is not a careful reader of the Committee's 24/48 hour notices might well conclude that the total amount of independent expenditures it made during a crucial period before the election was considerably more than it actually was – as much as \$3.4 million more. On the other hand, to the extent they were available prior to the election – and some, because of the statutory filing schedule, were not -- each of the next regular reports filed by the Committee disclosed a lesser amount of independent expenditures, which would provide a means by which the public could discern that the independent expenditures itemized in the 24/48-hour notices were duplicates.²

Despite the confusion resulting from the Committee's reports, however, it appears that essentially all of its independent expenditures were disclosed on time and accurately. Therefore, we conclude that the Committee does not appear to have violated 2 U.S.C. § 434(g) and 11 C.F.R. § 104.4(b)(2) and 104.4(c).

We note that the draft Finding 3, as presented to us, contains a recommendation that NRL PAC document procedures to ensure accurate filing of 24/48-hour independent expenditure notices in the future. NRL PAC may well already be doing this in fulfillment of its conciliation agreement in MUR 6266. *See MUR 6266 Conciliation Agreement, signed July 12, 2010; see also Memorandum to David O'Steen, from Lisa Lisker, Huckaby Davis Lister, Inc., October 2, 2010 (Compliance Management Plan listing steps NRL PAC is taking to "accurately track and report all financial activity on its regularly scheduled FEC reports as well as on 24 and 48 hour notices")*. Given these events, it is our understanding that the auditors will consider removing this portion of the

² We note that while RAD did not send the Committee an RFAI on this issue, it did send a letter informing the Committee that once an independent expenditure has been disclosed in a 24/48 hour notice, it need not be disclosed again on additional 24/48 hour notices.

The Commission's electronic filing system has an issue that can potentially result in duplicative independent expenditures when filing the 24/48-hour notices on Schedule E, Itemized Independent Expenditures, though we have no information that the duplicative independent expenditures in this audit resulted from this issue. Currently, when a committee wishes to amend a previously filed 24/48-hour notice using Schedule E, there is nothing on the schedule to indicate that the filing is an amendment (unlike regular reports that include a box to check). Many committees wishing to amend these notices do so by including a memo text with Schedule E, indicating that the filing is an amendment to a specified, previously filed Schedule E notice. NRL PAC filed some memo texts indicating an amendment to their Schedule E. *See e.g., 10/8/2008 48-hour report, FEC Image #28933386932 ("Correcting report just filed, anti-Obama expenses mistake[n]ly sic reported as anti-Thompson"); 10/10/2008 48-hour report, FEC Image #28992385003 ("Correcting report just filed, 48 hour report required for Pres., W18, NV3, FL24")*. However, this does not appear to have a relation to the committee's filing of "duplicate" notices.

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recommendation and including in the finding a discussion of steps taken by NRL PAC in accordance with the conciliation agreement in MUR 6266.