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Washington, DC 20463

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**SENSITIVE**

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon  
Staff Director

FROM: Allan D. Silberman  
Director, ADR Office

BY: Lynn M. Fraser  
Assistant Director, ADR Office

SUBJECT: Case for ADR Activation

DATE: March 9, 2004

On February 27, 2004, the ADR Office received from CELA the following case to review and determine its appropriateness for ADR processing. Based on that review, we determined that the case, ADR 158/RR 03L-01, NARAL Pro-Choice America PAC and John Botts, Treasurer, is appropriate for ADR and recommend that it be assigned to the ADR Office.

**ADR 158/RR 03L-01:** A review of the reports filed for the 2002 election cycle showed that Respondents failed to file two (2) 24-Hour Notices for independent expenditures totaling \$241,956.50. An independent expenditure on behalf of Ted Strickland ("Strickland") in the amount of \$42,132.50 was made on October 29, 2002. An independent expenditure on behalf of Jean Shaheen ("Shaheen") in the amount of \$199,824.00 was made on October 24, 2002. These expenditures were made after the 20<sup>th</sup> day but more than 24 hours before 12:01 a.m. of the day of the 2002 General election.

Respondents disclosed that the independent expenditure on behalf of Strickland was reported on the original pre-general report as cost estimates based on the contract. Respondents had entered into. Respondents also noted that due to a computer software error the estimated amounts for the Strickland independent expenditures were combined as aggregate totals with other independent expenditures for Strickland. Respondents stated that when they realized the software error and received the final invoice for Strickland independent expenditures, an amended report reflecting the actual amount of \$42,132.50 was filed.

## ADR CASE ANALYSIS REPORT

**ADR Case:** 158

**Respondents:**  
NARAL Pro-Choice America PAC  
John Botts, Treasurer

**RAD Referral:** RR 03L-01

**Respondent's Rep.:**  
Cassandra F. Lentchner, Esq.

**Date Forwarded to OGC:** 07/09/2003

**Committee Type:** Unauthorized

**Date Forwarded to ADRO:** 02/27/2004

**Committee Name:**  
NARAL Pro-Choice America PAC

**Date Reviewed by ADRO:** 03/04/2004

**District & State:** N/A

**Election Cycle:** 2002

**Summary of Referral:** Respondents failed to file two (2) 24-Hour Notices for independent expenditures totaling \$241,956.50. An independent expenditure on behalf of Ted Strickland ("Strickland") in the amount of \$42,132.50 was made on October 29, 2002. An independent expenditure on behalf of Jean Shaheen ("Shaheen") in the amount of \$199,824.00 was made on October 24, 2002. These expenditures were made after the 20<sup>th</sup> day but more than 24 hours before 12:01 a.m. of the day of the 2002 General election. The Reports Analysis Division ("RAD") sent a Notice to Respondents on September 30, 2002, which included a section titled *24 Hour Report on Independent Expenditures*. On January 24, 2003, RAD sent an Information Notice ("IN") to Respondents for the 2002 30 Day Post-General Report which noted that Respondents may have failed to file one or more required 24-Hour Notice for last minute independent expenditures in support of two (2) federal candidates. RAD sent a Request for Additional Information ("RFAI") on April 2, 2003 requesting Respondents provide the date of public dissemination for both the Strickland and Shaheen independent expenditures. RAD noted that responses from Respondents explained a software error on the 24 Hour Notice for the Strickland independent expenditure and that a 24 Hour Notice had been filed on the Shaheen independent expenditure. There is no record of the Shaheen 24 Hour Notice being received by the Commission.

**Alleged Violations:** 2 U.S.C. §§ 434(b)(6)(B)(iii), 434(c)(2), 11 C.F.R. § 104.4(b)

**Respondent's Reply to RAD:** In response to the IN, Respondents disclosed that the independent expenditure on behalf of Strickland was reported on the original pre-general

report as cost estimates based on the contract Respondents had entered into. Respondents also noted that due to a computer software error the estimated amounts for the Strickland independent expenditures were combined as aggregate totals with other independent expenditures for Strickland. Respondents stated that when they realized the software error and received the final invoice for Strickland independent expenditures, an amended report reflecting the actual amount of \$42,132.50 was filed.

In response to the RFAI, Respondents contend that the date of public dissemination and payment for the Strickland independent expenditures was October 29, 2002. In addition, Respondents contend that the payment of the Shaheen independent expenditures was October 24, 2002 and the public dissemination occurred on October 26, 2002. Respondents have no explanation why the Commission has no record of the October 26, 2002 24 Hour Notice.

**Analysis:** Section 434(b)(6)(B)(iii) and 434(c)(2) of the Title 2 of the United States Code and section 104.4(b) of Title 11 of the Code of Federal Regulations require a PAC or party committee to file a 24 Hour Report for any independent expenditures aggregating \$1,000 or more made after the 20<sup>th</sup> day, but more than 24 hours before 12:01 a.m. of the day of the election. The 24 Hour Report shall be filed within 24 hours after such independent expenditure is made.

Respondents had experience filing reports electronically. The Electronic Filing User Manual ("Manual") for PACs and Party Committees outlines the electronic filing process step by step. The Manual explains that the user must enter a fax number and/or email address for the purposes of sending the committee a confirmation that the report has been received by the FEC. The validation is a two step process in which the user first receives the message "Succeeded" which confirms that the Commission received the report, and the second message is either that the report was "Accepted" or that it was "Rejected." The Manual also explains step by step how a PAC or Party Committee files a 24 Hour Notice electronically. The Manual informs the user that the faxed or emailed receipt is the official receipt, and should be kept just as the user would keep a certified mail receipt as proof that the report was filed. In this case, however, Respondents do not have the official receipt as proof that they filed the 24 Hour Report electronically for the Shaheen contribution, nor does the Commission have a record of the receipt of this report.

**Issue:**

- Failure to file a 24 Hour Notice for independent expenditures 2 U.S.C. §§ 434(b)(6)(B)(iii), 434(c)(2), 11 C.F.R. § 104.4(b)

**Related FEC Experience/Guidance:** In reviewing other matters involving the same or similar issues, there are several cases involving a failure to file 24 Hour reports. Action taken in those matters range from taking no further action or finding no RTB on the issue of a failure to file a 24 Hour report for independent expenditures, but proceeding on other violations involved in the matter, or a civil penalty. MUR 5277 involves allegations of a failure to file five 24-Hour Notices totaling \$439,015 by an unauthorized PAC. In that

matter, Respondents filed affidavits declaring they filed the five 24-Hour Notices, however, the Commission had no record of their receipt. Respondents paid a civil penalty of \$5,500 to resolve the matter. The only cases located where Respondents said that they filed electronically, with no corresponding report on file with the Commission, were matters resolved through the Office of Administrative Review.

**ADR Recommendation: Assign to ADRO**

24-19-025-3034

In response to the RFAI, Respondents contend that they filed the report of the 24-Hour Notice for the Strickland independent expenditures on October 29, 2002. In addition, Respondents contend that the Shaheen independent expenditure was made on October 24, 2002 and the 24-Hour Notice was filed on October 26, 2002. Respondents have no explanation why the Commission has no record of the October 26, 2002 24-Hour Notice.

Attached for the Commission's review is the ADR Case Analysis Report (CAR) on ADR 158, along with copies of the EPS Rating and ADR Rating reports. The CAR includes an analysis of the case and a description of the issues that the ADR Office anticipates addressing once the case is assigned to ADR. In addition, the CAR has been reviewed by OGC, which concurs in the description of the case.

**Recommendation:** We recommend that ADR 158/RR 03L-01 be assigned to the ADR Office for processing.

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