



THE FEDERAL ELECTION COMMISSION
Washington, DC 20463

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SENSITIVE

MEMORANDUM

June 15, 2005

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: ADR 257 American College of Cardiology PAC
and Michael Votaw, Treasurer
Memorandum for Assignment

On May 19, 2005, the ADR Office received RAD 05L-20 to review and determine its appropriateness for ADR processing. Based on that review, we determined that the case is appropriate for ADR and recommend that it be assigned to the ADR Office.

SUMMARY: RAD referred the American College of Cardiology PAC and Michael A. Votaw, Treasurer ("Respondents") for failing to file one (1) 48-Hour Notice for an independent expenditure totaling \$25,250. The independent expenditure was made on October 13, 2005 and disclosed on a Schedule E to the Commission on October 22, 2004 when Respondents filed 2004 12 Day Pre-General Report. In response to a RFAI, Respondents filed the 48-Hour Notice on January 7, 2005. Respondents contend they were not aware of the 48-Hour Notice requirement because they were relying on an out-dated Campaign Guide.

Attached for the Commission's review is the ADR Case Analysis Report and ADR Rating report. The ADR Case Analysis Report includes an analysis of the case and a description of the issues that the ADR Office anticipates addressing if the case is

assigned to ADR. In addition, the ADR Case Analysis Report has been reviewed by the Office of General Counsel, which concurs in the description of the case.

If the Commission concurs in the recommendation, the above case description will be provided to Respondents as part of ADR Office's notification package sent to Respondents.

RECOMMENDATIONS:

1. Assign ADR 257 to the ADR Office for activation.

ADR CASE ANALYSIS REPORT

ADR Case: 257

Respondents:

American College of Cardiology PAC

Michael A. Votaw, Treasurer

RAD Referral: 05L-20

Respondents' Rep.: Michael A. Votaw

Date Forwarded to ADRO: 5/19/05

Committee Type: Qualified Non-Party

Date Reviewed by ADRO: 6/9/05

Committee Name: American college of Cardiology PAC

[REDACTED]

District & State: N/A

Election Cycle: 2004

Summary of Referral: The Reports Analysis Division referred the American College of Cardiology PAC and Michael A. Votaw, Treasurer ("Respondents" or the "Committee") for failing to file one (1) 48-Hour Notice for an independent expenditure totaling \$25,250 which was made during the period prior to and including the 20th day before the 2004 General Election.

Respondents' Reply to RAD: Respondents filed the relevant 48-Hour Notice for the independent expenditure totaling \$25,250 on January 7, 2005. Included with the 48-Hour Notice was a text message in which the Committee stated "It was our understanding at the time the independent expenditure was made that the FEC's regulations did not require additional disclosure since the expenditure was made more than 20 days before the general election. It has since come to our attention that for such expenditures made more than 20 days before an election a 48-Hour Notice is now required."

Analysis: On their 2004 12 Day Pre-General Report, Respondents disclosed a disbursement of \$25,250 made on October 13, 2004 in payment of one independent expenditure. Respondents did not, however, disclose it to the Commission within the time mandated by statute. The FECA and the implementing regulations require that political committees, other than authorized committees, disclose the name and address of each person who receives any disbursement during the reporting period in an aggregate amount or value in excess of \$200 within the calendar year in connection with an independent expenditure by the reporting committee. The reporting committee must also disclose the date, amount, and purpose of any such independent expenditure and a statement which indicates whether such independent expenditure is in support of, or in opposition to, a candidate. In addition, this disclosure must include the name and office sought by such candidate, and a certification, under penalty of perjury, whether such independent

expenditure is made in cooperation, consultation, or concert, with, or at the request or suggestion of, any candidate or any authorized committee or agent of such committee. 2 U.S.C. § 434(b)(6)(B)(iii), 11 C.F.R. § 104.3(b)(3)(vii). Relevant to this referral, the statute and regulations also require that a political committee which makes, or contracts to make, independent expenditures aggregating \$10,000 or more at any time up to and including the 20th day before the date of an election shall file a report describing the expenditures within forty-eight (48) hours. 2 U.S.C. § 434(g)(2), 11 C.F.R. 104.4(b)(2). A Prior Notice listing the official filing dates for reports sent to Respondents in August 2004 included a section titled 48- and 24-Hour Reports on Independent Expenditures reminding the Committee of these requirements for timely disclosure on independent expenditure disbursements.

Issues:

- 48-Hour Notice on Independent Expenditures Exceeding \$10,000 2 U.S.C. § 434(g)(2), 11 C.F.R. § 104.4(b)(2)

Recommendation: Assign to ADRO

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