



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

November 24, 2008

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2008-15

James Bopp, Jr., Esq.  
Clayton J. Callen, Esq.  
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The National Building  
1 South Sixth Street  
Terre Haute, IN 47807-3510

Dear Mr. Bopp and Mr. Callen:

We are responding to your advisory opinion request on behalf of the National Right to Life Committee, Inc. (the "NRLC"), concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to the NRLC's plan to use general treasury funds to finance the broadcast of two radio advertisements.

The Commission concludes that the NRLC may use its general treasury funds to finance the broadcast of the first advertisement. The Commission could not approve a response by the required four affirmative votes regarding the NRLC's second advertisement.

***Background***

The facts presented in this advisory opinion are based on your letter received on September 26, 2008, as supplemented by your email received on October 31, 2008.

The NRLC is a non-stock, not-for-profit corporation, exempt from Federal taxes under 26 U.S.C. 501(c)(4), but it is not a "qualified non-profit corporation" under 11 CFR 114.10. The NRLC has produced two sixty-second radio advertisements that it intends to broadcast. The first advertisement, entitled "Waiting for Obama's Apology #1," reads, in pertinent part, as follows:

**Female 1:** In August, National Right to Life released documents proving that in 2003, Barack Obama was responsible for killing a bill to provide care and protection for babies who are born alive after abortions, and that he later misrepresented the bill's content. When journalist David Brody asked Obama about National Right to Life's charges, Obama replied:

**Obama [clip]:** “. . . I hate to say that people are lying, but here's a situation where folks are lying.”

**Female 1:** We challenged Obama to admit that the documents are genuine, and admit to his previous misrepresentations. FactCheck[dot]org then investigated, and concluded:

**Female 2:** (clinical, detached tone): “Obama's claim is wrong . . . The documents . . . support the group's claims that Obama is misrepresenting the contents of [Senate Bill] 1082.”

**Female 1:** Was Obama afraid that the public would learn about his extreme position – that he opposed merely defining every baby born alive after an abortion as deserving of protection? Will Obama now apologize for calling us liars when we were the ones telling the truth?

The second advertisement, entitled “Waiting for Obama's Apology #2,” reads, in pertinent part, as follows:

**Female 1:** In August, National Right to Life released documents proving that in 2003, Barack Obama was responsible for killing a bill to provide care and protection for babies who are born alive after abortions, and that he later misrepresented the bill's content. When journalist David Brody asked Obama about National Right to Life's charges, Obama replied:

**Obama [clip]:** “. . . I hate to say that people are lying, but here's a situation where folks are lying.”

**Female 1:** We challenged Obama to admit that the documents are genuine, and admit to his previous misrepresentations. FactCheck[dot]org then investigated, and concluded:

**Female 2:** (clinical, detached tone): “Obama's claim is wrong . . . The documents . . . support the group's claims that Obama is misrepresenting the contents of [Senate Bill] 1082.”

**Female 1:** Was Obama afraid that the public would learn about his extreme position – that he opposed merely defining every baby born alive after an abortion

as deserving of protection? Will Obama now apologize for calling us liars when we were the ones telling the truth?

Barack Obama: a candidate whose word you can't believe in.

The NRLC wishes to use general treasury funds to finance the broadcast of these advertisements. Until the NRLC receives a response to its request, its registered political committee, National Right to Life Political Action Committee ("NRLPAC"), plans to finance the broadcast of *Waiting for Obama's Apology #2*. You represent that the broadcast of the advertisements will be "independent" and will not be made in concert or cooperation with, or at the request or suggestion of, any candidate or candidate's agents, or any political party committee or its agents.<sup>1</sup>

### ***Questions Presented***

- (1) Would the NRLC's use of general treasury funds to finance the broadcast of the advertisements constitute prohibited corporate expenditures under 2 U.S.C. 441b(a) and 11 CFR 114.2(b)(2)(ii)?
- (2) Would the NRLC's broadcast of the advertisements constitute prohibited corporate-funded electioneering communications under 2 U.S.C. 441b(b)(2) and 11 CFR 114.2(b)(3)?

### ***Legal Analysis and Conclusions***

#### *Waiting for Obama's Apology #1*

The Commission concludes that the NRLC may finance the broadcast of *Waiting for Obama's Apology #1* with general treasury funds.<sup>2</sup>

#### *Waiting for Obama's Apology #2*

The Commission could not approve a response by the required four affirmative votes regarding *Waiting for Obama's Apology #2*.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a

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<sup>1</sup> Thus, for purposes of this advisory opinion, the Commission assumes that the advertisements in the request would not meet the coordinated communication definition because they would not satisfy any of the six conduct standards in 11 CFR 109.21(d).

<sup>2</sup> The Commission's conclusion is limited to the radio script presented in the request. Advertisements that communicate information visually, such as those on television or the Internet, are outside of the scope of this advisory opinion.

conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law.

On behalf of the Commission,

(signed)  
Donald F. McGahn II  
Chairman