

SUPPLEMENT TO AOR 2009-13

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September 22, 2009

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VIA E-MAIL: SWALTHER@FEC.GOV

The Honorable Steven T. Walther
Chairman
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: FEC AOR 2009-13
Black Rock Group
Supplemental Comments regarding *Emily's List v. FEC*

Dear Chairman Walther:

We file this comment on behalf of our client, Black Rock Group ("BRG"), regarding Friday's decision by the U.S. Court of Appeals for the D.C. Circuit in *Emily's List v. Federal Election Commission*, Slip. Op., No. 08-5422 (D.C. Cir., September 18, 2009). The Court's reasoning in this decision supports BRG's position that there is no basis in law for prohibiting multiple individuals engaging in independent expenditure activities from sharing a common vendor or communicating with each other about their activities.

BRG's AOR was originally filed May 27, 2009, and the initial sixty-day deliberation period ended on July 27, 2009. The latest of the five extensions to which BRG agreed at the Commission's request runs out on September 28, 2009. The prolonged delay in issuing the Advisory Opinion is adversely impacting our client and preventing the individuals who wish to establish limited liability companies from exercising their First Amendment rights.

We specifically call your attention to the *Emily's List* opinion detailing the U. S. Supreme Court precedent on independent speech relevant to the questions at issue in the BRG AOR. Specifically, the Court stated that the Supreme Court has not upheld limits on multiple individuals combining resources to sponsor independent expenditure advertisements. See Slip Op. at 14-15 ("If the First Amendment prohibits any limitation on how much money an independent political committee can spend on an independent-expenditure campaign, how can it permit limits on donations to committees that make only independent expenditures?") (citations and quotations omitted); see also *id.* at 16 ("[T]he Court has never held that it is constitutional to apply contribution limits to political committees that make solely independent expenditures.") (citations and quotations omitted, emphasis in original). Since the Supreme Court's precedents hold that political committees engaged solely in independent expenditure activities cannot

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constitutionally be subject to contribution limits, there is no legal basis for holding that multiple individuals engaging in their own independent expenditure activities cannot share a common vendor or communicate with each other. *See* Slip Op. at 14 (“After all, if one person is constitutionally entitled to spend \$1 million to run advertisements supporting a candidate (as Buckley held), it logically follows that 100 people are constitutionally entitled to donate \$10,000 each to a non-profit group that will run advertisements supporting a candidate.”) (footnote omitted). Accordingly, BRG can serve as the common vendor to multiple individual LLCs sponsoring independent expenditures.

We look forward to the Commission’s prompt answer to BRG’s AOR.

Please do not hesitate to contact me with any questions.

Respectfully submitted,

/s/ William J. McGinley

William J. McGinley

cc: The Honorable Matthew S. Petersen
Vice-Chairman
The Honorable Cynthia L. Bauerly
Commissioner
The Honorable Caroline C. Hunter
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The Honorable Donald F. McGahn II
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