



### **AO 2011-24 LLC May Form Independent Expenditure-Only Committee**

Louder Solutions, LLC d/b/a StandLouder.com (StandLouder.com) may form an "independent expenditure-only committee" for the purpose of accepting ad content, receiving contributions and funding independent expenditures as part of its proposed business model which would allow for users of StandLouder.com to create, post and fund certain political ads. However, the Commission could not approve by the required four votes whether StandLouder.com is a political committee, nor could it approve which disclosure and disclaimer requirements apply to StandLouder.com's proposed advertisements.

#### **Background**

StandLouder.com is a for-profit limited liability company (LLC) established under the laws of North Carolina. It has a single natural person member and has not elected to be treated as a corporation by the IRS. StandLouder.com maintains that it will be operated exclusively for commercial purposes and is not established, financed, maintained or controlled by any candidate or political party committee, nor will it conduct any of its activities in coordination or at the request or suggestion of any candidate or party committee.

StandLouder.com plans to provide services, without regard to party affiliation, through its website that will enable users to submit proposed ads for posting on the website and to allow users to help finance the airings of those ads on television, radio or other media. StandLouder.com maintains that submissions of content for ads may concern any topic, and some ads will relate to social and political issues, including candidates for public office.

#### *Creation of Content*

StandLouder.com states that it will reserve the right to refuse to post ads if they contain offensive content or if they raise legal compliance issues such as defamation, intellectual property infringement or fraud, etc. Ads may not solicit contributions to any political committee or candidate, nor may they republish or redistribute candidate-created content. StandLouder.com will also ask persons or entities who submit ads to represent that they are not foreign nationals, federally chartered organizations, federal government contractors, candidates or political party committees. StandLouder.com will, however, require content creators to identify themselves to StandLouder.com and to provide information regarding the production costs of their advertisement submissions. This information will be included by StandLouder.com in reports filed with the Commission.

## *Funding Advertisements*

StandLouder.com proposes to establish a two-stage process for collecting funds from users of its website who wish to finance an ad for distribution to television, radio or other media. When StandLouder.com posts an ad on its website, a user may pledge any amount to help finance its distribution, but will only be charged \$1 initially on his or her credit card. When StandLouder.com receives enough pledges to indicate that an ad will be successfully funded, StandLouder.com will "open [the advertisement] for sponsorship." At this second stage, funders who have pledged funds must take affirmative steps to pay the balance due on their pledge. Other users may also provide funds, which will be charged immediately to their accounts.

StandLouder.com will accept funds from individuals, partnerships, corporations, nonconnected committees and separate segregated funds (SSFs) to help finance advertisements. Once StandLouder.com has determined a particular "media strategy" for an ad, it will inform users of that strategy and purchase air time for, or otherwise distribute, the ad.

## **Analysis**

The Commission could not approve a response by the required four votes on whether StandLouder.com is a political committee, or whether collectively StandLouder.com, the content creators and the users who donate funds will become a political committee or a series of political committees. Additionally, the Commission could not approve a response as to which disclosure and disclaimer obligations apply to StandLouder.com's advertisements.

However, the Commission agreed that StandLouder.com could form an "independent expenditure-only committee" (IE-only committee) for the purpose of accepting advertisement content, receiving contributions and funding independent expenditures.

Nonconnected committees that make only independent expenditures may solicit and accept unlimited contributions from individuals, corporations and labor organizations and from other political committees, but not from foreign nationals, federal contractors, national banks or federally chartered corporations. See [AO 2011-11](#). StandLouder.com asserts that its IE-only committee would register with the Commission as a nonconnected committee, would not make contributions or coordinated communications, and would comply with all reporting and disclaimer requirements provided in the Federal Election Campaign Act and Commission regulations. As such, the Commission concluded that StandLouder.com may establish and operate an IE-only committee.

*(Posted 2/7/12; By: Myles Martin)*

## **Resources:**

- [Advisory Opinion 2011-24](#) [PDF; 7 pages]
- [Commission Open Meeting of February 2, 2012](#)
- [Recent Developments in the Law \(IE-Only Committees\)](#)

## **AO 2011-27 Severance Payment to Candidate Not a Contribution**

A candidate for the U.S. House of Representatives may receive a severance payment from his former employer, a non-profit corporation, without the payment being considered an impermissible contribution. The non-profit corporation's severance payment is not a contribution because the payment is considered to be made "irrespective of the candidacy."

### **Background**

New Mexico Voices for Children ("NM Voices") is a non-profit 501(c)(3) organization that currently has 13 employees. Eric Griego worked four years as NM Voices' Executive Director with an annual salary of \$96,400. NM Voices and Mr. Griego did not have a written employment contract. Mr. Griego stopped working at NM Voices on October 17, 2011. He is currently a candidate for the U.S. House of Representatives.

According to NM Voices' advisory opinion request, Mr. Griego wanted to continue working for NM Voices while he campaigned for Congress by taking a leave of absence or reducing his work schedule. NM Voices' Board of Directors ("the Board") thought it would be in the best interest of NM Voices if Mr. Griego resigned so NM Voices could avoid the appearance that it held influence over Mr. Griego's campaign. Mr. Griego agreed to resign prematurely. The Board agreed to make a severance payment to Mr. Griego amounting to three months of his salary, as long as the Federal Election Commission determined that such a payment would not result in a contribution from NM Voices to Mr. Griego's campaign.

While NM Voices maintains a written policy manual for its employees, the manual does not address severance packages. The Board has discretion to decide whether an employee leaving NM Voices will receive a severance payment. Before 2007, NM Voices provided severance payments occasionally. Starting in 2007, when Mr. Griego became Executive Director, NM Voices instituted an unwritten policy of providing severance payments to employees who were asked to leave the organization involuntarily because the separation was deemed to be in NM Voices' best interest. If employees left voluntarily or their positions were terminated because of lost grant funding, NM Voices did not make any severance payments.

Since 2007, 27 employees have left NM Voices, some of their own volition. Of the 27 employees who left, four had their employment terminated because their positions were cut after a reorganization process. These four employees were the only ones to receive severance payments. Three of these four were senior managers who received severance payments equal to three months of pay.

## Analysis

Corporations, including non-profits such as NM Voices, are barred from contributing to federal candidates or their authorized committees. 11 CFR 114.2(a) and (b)(1). Contributions include any gift, loan, advance or deposit of money or anything of value made for the purpose of influencing any election for federal office. 11 CFR 100.52(a). Under Commission regulations that prohibit "personal use" of campaign funds, a third party's payment of a candidate's expenses that would otherwise be deemed "personal use" is considered a contribution by the third party, unless the payment would have been made "irrespective of the candidacy." 11 CFR 113.1(g)(6).

Commission regulations provide that employment-related payments are considered to be made "irrespective of the candidacy " only if the compensation results from *bona fide* employment that is genuinely independent of the candidacy; is exclusively in consideration of services provided by the employee as part of this employment; and does not exceed the amount of compensation which would be paid to any other similarly qualified person for the same work over the same period of time. 11 CFR 113.1(g)(6)(iii). The Commission found that NM Voices' proposed severance is based on Mr. Griego's past "*bona fide* employment," would be made "exclusively in consideration of" his past employment, and would be in line with severance packages provided by NM Voices to "similarly qualified employees for the same work over the same period of time."

Therefore, the proposed severance payment will be made "irrespective of the candidacy" and will not constitute a contribution. The facts of NM Voices' case are similar to those considered in [AO 2004-08 \(American Sugar Cane League\)](#). In that advisory opinion, the Commission determined that a non-profit corporation's proposed severance payment to an employee who resigned to seek federal office was not a prohibited contribution.

(Posted 2/7/12; By: Isaac Baker)

## Resources:

- [Advisory Opinion 2011-27](#) [PDF; 5 pages]
- [Commission Open Meeting of February 2, 2012](#)

## AO 2011-28 Reporting Independent Expenditure Ads Placed on Facebook

Western Representation PAC may not exclude the actual costs of independent expenditure ads placed on Facebook from the calculation of its expenses included on its 24-hour and 48-hour reports for the 2012 Presidential primary elections. The statutory obligation to file 24- and 48-hour reports includes these types of ads placed on Facebook. For ads that do not reference or target a specific election, the Committee must divide the cost of placing each ad by the number of upcoming primary elections. In the event the Committee does not know the actual cost of an ad prior to the filing deadline, it may estimate the cost and report the correct amount on the Committee's next regular report.

## Background

Western Representation PAC (the Committee) is a nonconnected committee that intends to place ads on Facebook in connection with the 2012 Republican Presidential primary elections. The ads will be independent expenditure communications that expressly advocate for or against a federal candidate, but they will not reference a specific Presidential primary election nor be geographically targeted to a particular state.

The Committee seeks to exclude the actual costs of these Facebook ads from its 24-hour and 48-hour reports of independent expenditures, and wants to avoid attributing the costs to various states' Presidential primary elections on its regularly scheduled monthly reports. The Committee claims that the reporting obligations burden their First Amendment rights because it will have to determine, for every ad placed: 1) the state primary elections to which the ad applies; 2) whether that ad falls within that particular primary election's 24- or 48-hour reporting period; and 3) the cost of placing each individual ad.

## Analysis

Under the Federal Election Campaign Act (the Act) and Commission regulations, an "independent expenditure" is an expenditure by a person that expressly advocates the election or defeat of a clearly identified federal candidate that is not made in concert or cooperation with, or at the request or suggestion of, the candidate, his or her authorized committee, a party committee, or any of their agents. 11 CFR 100.16. A political committee that makes independent expenditures aggregating \$1,000 or more after the 20th day, but more than 24 hours, before the date of a given election, must file a 24-Hour Report disclosing the expenditures. 11 CFR 104.4(c). A political committee that makes independent expenditures aggregating \$10,000 or more at any time up to and including the 20th day before the date of a given election must file a 48-hour report disclosing the expenditures. 11 CFR 104.4(b)(2). The 24- and 48-hour filing periods begin when the independent expenditure is publicly distributed or otherwise publicly disseminated. 11 CFR 104.4(c), 104.4(b)(2). Additional reports must be filed each time the political committee makes independent expenditures which, in the aggregate, reach the 24- or 48-hour threshold with respect to the same election as that to which the initial report relates. 11 CFR 104.4(c) and 104.4(b)(2). Independent expenditures aggregating less than \$10,000 with respect to a given election any time during the calendar year up to and including the 20th day before an election must be disclosed on a committee's regularly scheduled report. 11 CFR 104.4(b)(1).

Independent expenditures are aggregated with respect to a given election regardless of which candidate is identified in the communication. 11 CFR 104.4(a), (b)(1)-(2), and (c). For purposes of aggregating independent expenditures, each state's Presidential primary election is considered a separate election. See [Advisory Opinion 2003-40 \(Navy Veterans\)](#).

In denying the Committee's request to exclude the actual costs of independent expenditure ads from the calculation of its expenses included on its 24-hour and 48-hour reports, the Commission concluded that, since the statutory obligation to file 24- and 48-hour reports includes these types of ads placed on Facebook, the Committee is required to file 24-hour and 48-hour reports as set forth in the Act and the Commission's regulations. For ads that do not reference or target a specific election, the Commission directed the Committee to divide the cost of placing each ad by the number of upcoming primary elections. For example, an ad for which the Committee paid \$2,000 that was placed before the first primary

election of the cycle would relate to all subsequent Presidential primary elections. Therefore, the cost of this ad would be \$2,000, divided by the total number of primary elections for that cycle. After a Presidential primary election has occurred, no further advertising costs would be attributable to that election for that cycle.

In the event the Committee does not know the actual cost of an ad prior to the filing deadline, it should estimate the cost and, if, based on that estimate, a report is required, indicate that the reported amount is an estimate. Once the Committee receives information regarding the actual cost of the advertisement, and if the actual cost differs from the estimate, the Committee should report the correct amount on the Committee's next regular report and reference the earlier estimate.

The Commission also denied the Committee's request to report the actual monthly costs of its independent expenditure ads on Facebook on its regular monthly reports without attributing these costs to the various states' Presidential primary elections. The Commission concluded that since the committee files reports on a monthly basis, it has sufficient time to aggregate its costs and report them to the Commission, as required by the statute.

*(Posted 2/14/12; By: Zainab Smith)*

#### **Resources:**

- [Advisory Opinion 2011-28](#) [PDF; 6 pages]
- [Commission Open Meeting of February 2, 2012](#)

#### **AO 2012-02 Wawa**

Wawa, Inc., a corporation that operates convenience stores, may solicit its Area Managers and General Managers on behalf of its separate segregated fund (SSF), Wawa PAC, because they are part of Wawa's "executive or administrative personnel." The General Managers' limited, discretionary manual labor does not exclude them from the restricted class of Wawa's SSF.

#### **Background**

Wawa has 41 Area Managers, each of whom covers a fixed geographic territory. Between 12 and 17 General Managers, who operate the stores, report to each Area Manager. Area Managers do not supervise the General Managers' day-to-day work. They do, however, have the authority to hire and fire, to discipline, and to evaluate the performance of, the General Managers. Area Managers also maintain corporate standards within their territories, ensure compliance with corporate policies and federal, state and local regulations, analyze financial statements and participate in the corporate budget process.

General Managers manage the entire operation at each store and supervise approximately thirty employees, on average. Their principal duties include hiring, training and coaching store employees, ensuring that store employees follow safety, security, quality and operations policies, analyzing local trends and results to improve the store's standing and planning and preparing employees' work schedules. Although they occasionally undertake manual tasks in the stores, this is at their discretion.

Wawa asks if the Area Managers and General Managers are "executive or administrative personnel" as defined in the Federal Election Campaign Act (the Act) and Commission regulations and therefore constitute members of Wawa PAC's restricted class who may be solicited at any time.

### **Analysis**

Under the Act and Commission regulations, the Area Managers and General Managers qualify as executive or administrative personnel. In determining which employees have "policymaking, managerial, professional, or supervisory responsibilities" (2 U.S.C. §441b(b)(7)), the Fair Labor Standards Act (FLSA) and regulations issued under the FLSA, may serve as a guideline. 11 CFR 114.1(c)(4).

Both Area Managers and General Managers are salaried employees who "run the corporation's business." Both oversee "units with permanent status and [continuing] functions" in the corporate structure. 29 CFR 541.103. Additionally, they have the authority to hire, fire and evaluate the performance of those they supervise and may discipline them when appropriate, and both exercise the kind of discretion and independent judgment that FLSA regulations attribute to managers. Area Managers formulate, affect, interpret and implement management policies and operating practices. General Managers interpret and implement management policies and operating practices. Both perform work that affects business operations to a substantial degree, and both plan business objectives for the area. See 29 CFR 541.202.

Although General Managers spend most of their workday supervising hourly employees and may, at their discretion, perform manual tasks, they are not considered "foremen [or] lower level supervisors having direct supervision over hourly employees." See 11 CFR 114.1(c)(2)(ii). They have discretionary authority in matters affecting the existence of the stores, including the receipt of inventory, management of safety programs, analysis of store profit and expenses and hiring and firing of their employees. Furthermore, a substantial number of the hourly associates they supervise are considered full time and are eligible for benefits (and may supervise other hourly employees). Because of these factors, and because manual work is incidental to their managerial duties, the Commission concludes that General Managers are not foremen or lower level supervisors, but rather executive or administrative personnel. Thus, both General Managers and Area Managers qualify as members of the restricted class who may be solicited at any time for contributions to Wawa PAC.

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*(Posted 2/24/12: By: Christopher Berg)*

## Resources:

- [Advisory Opinion 2012-02](#) [PDF; 6 pages]
- [Commission Discussion of AO 2012-02](#) 
- [Campaign Guide for Corporations and Labor Organizations](#)
- [Compliance Assistance - Fair Labor Standards Act \(U.S. Department of Labor\)](#)

## *Vroom v. FEC*

On January 27, 2012, Peter J. Vroom filed a complaint in the US District Court for the District of Columbia. Mr. Vroom's complaint challenges the Commission's decision to dismiss an administrative complaint he had filed with the Commission concerning [AO 2009-18](#), the disaffiliation of Penske Truck Leasing's SSF (Penske PAC) and General Electric Company Political Action Committee (GEPAC). Mr. Vroom's administrative complaint stated that Penske remained completely dependent upon GE for its financial survival, and that because GE remained the "control party" in the Penske Truck Leasing Joint Venture, the FEC should have denied disaffiliation of their separate segregated funds.

Mr. Vroom's court complaint alleges that the FEC did not examine his supporting documentation before dismissing his administrative complaint. This supporting documentation included mainly a copy of his November 1, 2010, complaint to the Securities and Exchange Commission (SEC), in which he alleged that GE's March 2009 deconsolidation of Penske from its balance sheet was illegally accomplished through a series of prior loans from GE to Penske.

Mr. Vroom further alleges that the FEC's decision to grant disaffiliation to GEPAC and Penske PAC was unprecedented because of the "razor thin" joint venture ownership ratio of 50.1% and 49.9% between their connected organizations. According to Mr. Vroom's court filing, no organization having more than a 40% outside interest was ever granted disaffiliation by the FEC.

Mr. Vroom's court complaint asks that the District Court instruct the Commission to reconsider his complete complaint and to apply FEC precedent and factors of affiliation to determine the affiliation status of GEPAC and Penske PAC, or to issue a declaratory judgment that GEPAC and Penske PAC are in fact affiliated.

Case no. 1:12-cv-00143-RMC

*(Posted 2/8/12; By: Christopher Berg)*

## Resources:

- [Vroom v. FEC Ongoing Litigation Page](#)

## **2012 Coordinated Party Expenditure Limits**

The 2012 coordinated party expenditure limits are now available. The limits are:

- \$91,200 for House nominees in states that have only one U.S. House Representative;
- \$45,600 for House nominees in states that have more than one U.S. House Representative; and
- A range from \$91,200 to \$2,593,100 for Senate nominees, depending on each state's voting age population.

Party committees may make these special expenditures on behalf of their 2012 general election nominees. National party committees have a separate limit for each nominee. The national Senatorial and Congressional committees do not have separate coordinated party expenditure limits, but may receive authorization to spend against the national limit or state party limits. Each state party committee has a separate limit for each House and Senate nominee in its state. Local party committees do not have their own separate limit. One party committee may authorize another committee of that party to make an expenditure against the authorizing committee's limit. Local committees may only make coordinated party expenditures with advance authorization from another committee within the party.

Coordinated party expenditure limits are separate from the contribution limits; they also differ from contributions in that the party committee must spend the funds on behalf of the candidate rather than give the money directly to the campaign. Although these expenditures may be made in consultation with the candidate, only the party committee making the expenditure—not the candidate committee—must report them. (Coordinated party expenditures are reported on FEC Form 3X, line 25, and are always itemized on Schedule F, regardless of amount.)

[Click here to view the 2012 coordinated party expenditure limits.](#) The link also includes information on which party committees have the authority to make coordinated party expenditures; the formula used to calculate the coordinated party expenditure limits; and a listing of the state-by-state coordinated party expenditure limits for senate candidates

For additional information on coordinated party expenditures, please consult the [Campaign Guide for Political Party Committees](#). [PDF]

*(Posted 2/17/2012; By: Zainab Smith)*

### **Resources:**

- [FEC Compliance Map](#)
- [Coordinated Communications and Independent Expenditures Brochure](#)

## **2012 Lobbyist Bundling Disclosure Threshold**

The Federal Election Campaign Act, as amended by the Honest Leadership and Open Government Act of 2007 (HLOGA), requires certain political committees to disclose contributions bundled by lobbyists/registrants and lobbyist/registrant PACs once the contributions exceed a specified threshold amount.

The Commission must adjust the threshold amount at the beginning of each calendar year based on the change in the cost of living since 2006, which is the base year for adjusting this threshold. [fn1] The resulting amount is rounded to the nearest multiple of \$100. 2 U.S.C. §441a(c)(1)(B)(iii). Based on this formula, the lobbyist bundling disclosure threshold for 2012 is \$16,700.

*(Posted 2/23/12; By: Isaac Baker)*

*1/ "Overnight mail" includes Priority or Express Mail having a delivery confirmation, or an overnight service with which the report is scheduled for next business day delivery and is recorded in the service's on-line tracking system.*

### **Resources:**

- [Lobbyist Bundling Disclosure Guidance](#)
- [FEC Form 3L](#) and [Instructions](#) [PDF]

## **Roemer Certified for Primary Matching Funds**

Charles E. "Buddy" Roemer III on Thursday became the first 2012 presidential candidate to be declared eligible by the Federal Election Commission to receive federal matching funds. Roemer is seeking the Republican nomination for president in 2012.

To become eligible for matching funds, candidates must raise a threshold amount of \$100,000 by collecting \$5,000 in 20 different states in amounts no greater than \$250 from any individual. Other requirements to be declared eligible include agreeing to an overall spending limit, abiding by spending limits in each state, using public funds only for legitimate campaign-related expenses, keeping financial records and permitting an extensive campaign audit.

Based on documents filed by Buddy Roemer for President, Inc. on January 25, 2012, contributions from the following states were verified for threshold purposes: Alabama, Arizona, California, Florida, Georgia, Illinois, Louisiana, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Texas, Virginia and Washington. All of the materials included with this submission may be viewed [here](#). Based on Roemer's initial threshold submission, the Commission will request that the United States Treasury make an initial payment of \$100,000 to Roemer's campaign.

Once declared eligible, campaigns may submit additional contributions for matching funds on the first business day of every month. The U.S. Treasury Department may pay the Commission-certified amounts beginning this month. The maximum amount a primary candidate could receive is currently estimated to be about \$22.8 million.

The presidential public funding program is financed through the \$3 check-off that appears on individual income tax returns. The program has three elements: grants to parties to help fund their nominating conventions, grants available to nominees to pay for the general election campaign, and matching payments to participating candidates during the primary campaign.

In July and September of 2011, the Commission certified \$17,689,800 each to the Republican and Democratic parties for their conventions. The Commission estimates that each general election nominee will be eligible for a grant of approximately \$91.2 million.

*(Posted 2/3/12; By: Myles Martin)*

**Resources:**

- [FEC Press Release](#)
- [Press Office Backgrounder on Presidential Election Campaign Fund](#)
- [Brochure: Public Funding of Presidential Elections](#)[Brochure: The \\$3 Tax Checkoff](#)

**FEC to Host March 21 Seminar/Webinar for Campaigns and Party Committees**

The Commission will hold a seminar for campaigns and party committees at its Washington, DC headquarters on Wednesday, March 21. New this year, the seminar will also be offered as a webinar for those who cannot attend in person. Commissioners and staff will conduct a variety of technical workshops on the federal campaign finance laws affecting House and Senate campaigns and political party committees. Workshops are designed for those seeking an introduction to the basic provisions of the law as well as for those more experienced in campaign finance law. To view the [agenda](#) or to register for the seminar, please visit the seminar website at <http://www.fec.gov/info/conferences/2012/campaignpartyseminar.shtml>

*Webinar Information.* Seminar workshops will be simulcast for online attendees, who will see and hear all workshops and will be able to ask questions via live chat or email. Additional instructions and technical information will be provided to those who register for the webinar.

*In-Person Attendees.* The seminar will be held at the FEC's headquarters at 999 E Street, NW, Washington, DC. The building is within walking distance of several subway stations. Attendees are responsible for making their own arrangements for accommodations. The FEC recommends that individuals planning to travel to attend the seminar wait to finalize travel arrangements until their conference registration has been confirmed by Sylvester Management Corporation.

*Registration Information.* The registration fee is \$100 to attend in-person or \$75 to participate online. Registration fees include a \$25 nonrefundable transaction fee. A full refund (minus the transaction fee) will be made for all cancellations received before 5 p.m. EDT on Friday, March 16; no refund will be made for cancellations received after that time. Complete registration information is available online at <http://www.fec.gov/info/conferences/2012/campaignpartyseminar.shtml>.

### **Registration Questions**

Please direct all questions about seminar/webinar registration and fees to Sylvester Management Corporation (Phone: 1-800/246-7277; email: [Rosalyn@sylvestermanagement.com](mailto:Rosalyn@sylvestermanagement.com)). For other questions call the FEC's Information Division at 1-800/424-9530 (press 6), or send an email to [Conferences@fec.gov](mailto:Conferences@fec.gov).

*(Posted 2/14/12; By: Dorothy Yeager)*

### **Resources:**

- [FEC Educational Outreach Opportunities](#)