

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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 STOP THIS INSANITY INC )  
 EMPLOYEE LEADERSHIP FUND )  
 PO BOX 75021 )  
 WASHINGTON, DC 20013 )  
 )  
 STOP THE INSANITY, INC. )  
 4856 E. BASELINE ROAD, STE 102 )  
 MESA, AZ 85206 )  
 )  
 GLENGARY, LLC )  
 4856 E. BASELINE ROAD )  
 MESA, AZ 85206 )  
 )  
 MR. TODD CEFARATTI )  
 619 E PARK AVE )  
 GILBERT, AZ 85234, )  
 )  
 MR. LADD EHLINGER )  
 18016 S WESTERNAVE, #223 )  
 GARDENA, CA 90248 )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 FEDERAL ELECTION COMMISSION )  
 999 E STREET, NW )  
 WASHINGTON, DC 20463, )  
 )  
 Defendant. )  
 \_\_\_\_\_)

Civil Case No. \_\_\_\_\_

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 VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF  
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Plaintiffs Stop This Insanity, Inc. Employee Leadership Fund, Stop This Insanity, Inc.,  
 Glengary LLC, Todd Cefaratti, and Ladd Ehlinger bring this action for declaratory and  
 injunctive relief, and complains as follows:

## INTRODUCTION

1. This case challenges laws that, as interpreted and applied by the Federal Election Commission, abridge the freedom of speech and association guaranteed under the First Amendment to the Constitution. These challenges are brought as applied against 2 U.S.C. §§ 441a(a)(1)(C), 441a(a)(3), 441b(a) and 441b(b)(4)(A)(i). The Stop the Insanity Employee Leadership Fund (hereinafter “ELF”) is a connected committee or separate segregated fund of the corporation, Stop This Insanity, Inc. (hereinafter “STI”). ELF, STI, and its potential contributors’ First Amendment rights are infringed by laws enforced and interpreted by the Federal Election Commission that prohibit ELF from opening a non-contribution account (*Carey* account, *see Carey v. FEC*, 791 F. Supp. 2d 121 (D. D.C. 2011) to solicit, *Cf.* 2 U.S.C. § 441b(b)(4)(A)(i), and accept contributions not subject to the limits of 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) or the source prohibitions of 2 U.S.C. § 441b(a) to finance independent expenditures. Such contributions are called unlimited contributions or *Carey* contributions. These citizens include individuals in the general public, STI’s restricted class, STI’s employees (solicited no more than twice per calendar year subject to certain federal restrictions, *see* 2 U.S.C. § 441b(b)(4)), other political committees, corporations, and labor organizations
2. Such contributions and expenditures from ELF’s *Carey* account are subject to the reporting requirements at 2 U.S.C. §434(a), 11 C.F.R. 100.19 and 11 C.F.R. 104.4 and should be subject to the Commission’s recent guidance on *Carey* Accounts and *Carey* Contributions in its October 5, 2011 “FEC Statement on *Carey v FEC*”.

3. The restricted class of ELF is very small. ELF can only engage in meaningful speech by making independent expenditures, and can only finance independent expenditures by associating with others in the general public.
4. In *Citizens United v. FEC*, 130 S. Ct. 876 (2010), the U.S. Supreme Court recognized the right of corporations, and all associations of American citizens, to speak out about candidates and elections as protected under the First Amendment. Subsequent to *Citizens United*, *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010), *EMILY's List*, 581 F.3d 1 (D.C. Cir. 2009), and *Carey v. FEC*, 791 F. Supp. 2d 121 (D.D.C. 2011), STI and its restricted class members are each constitutionally entitled to spend unlimited sums on independent expenditures themselves, to do so in conjunction with others, and to make *Carey* Contributions to the *Carey* Accounts of other, non-connected, PACs. Because they may each engage in any and all of these activities themselves, or in concert with others, there is neither a compelling government interest nor a rational basis to deny STI and its restricted class members the speech and associational right to do so through a *Carey* account within ELF, its SSF.
5. Though entitled to do so, STI, a 501(c)(4) social welfare organization, has no interest in engaging in independent expenditures. STI should not be forced to do so merely to enable its restricted class employees to speak about candidates to federal office. Moreover, STI recognizes that disclosure is furthered by speaking through its SSF, a fully reporting political committee registered with the Commission.
6. Subsequent to *Citizens United*, as a matter of law, independent expenditures do not create apparent, or actual, *quid pro quo* corruption. 130 S. Ct. at 890. According to the

*SpeechNow.org* court, regulations burdening independent expenditures are outside the scope of government's legitimate interest in preventing corruption. 599 F.3d at 690.

7. Likewise, the Preliminary Injunction issued in *Carey* held that political action committees ("PACs") are constitutionally entitled to solicit and accept amount- and source-restricted contributions to finance contributions to candidates, and solicit and accept unlimited *Carey* contributions to a *Carey* account to finance independent expenditures. 791 F. Supp. 2d 121 (D. D.C. 2011).
8. There is no compelling government interest in discriminating between the independent expenditure activities of non-connected PACs—such as the National Defense PAC discussed in *Carey v. FEC* or EMILY's List discussed in the case of the same name—and the independent expenditure activity of PACs connected to a domestic non-profit corporation ("SSFs") such as ELF. To do so would discriminate against speakers based on how they choose to associate, in derogation of *Citizens United*, without preventing quid pro quo corruption or its appearance. The First Amendment protections guaranteed to the non-connected PACs in *Carey* and *EMILY's List v. FEC*, 581 F.3d 1, 12 (D.C. Cir. 2009), should be extended to connected PACs known as SSFs.
9. Likewise, there is no reason SSFs like ELF may not solicit members of the general public for contributions to a *Carey* account. When the Supreme Court upheld the solicitation restrictions at 2 U.S.C. §441b(b)(4)(A)(i) in *FEC v National Right to Work Committee*, 459 U.S. 197 (1982), they did so only to further a complete ban on political participation financed with corporate or union treasury funds. *Id.* Now that the participation ban has been lifted with regard to the funding of independent expenditures in *Citizens United* and other federal cases, there is no constitutional reason to prevent a domestic non-profit organization from

raising the funds it needs for independent expenditures from any group of citizens choosing to associate with it. The only possible, relevant exception to that maxim, which Plaintiffs do not challenge in this case, is the prohibition on soliciting employees of the SSF not in the restricted class more than twice annually and subject to certain restrictions.<sup>1</sup> See 2 U.S.C. § 441b(b)(4)(B). Neither ELF nor STI will solicit employees who are not included in STI's restricted class outside the parameters set forth at 2 U.S.C. § 441b(b)(4)(B) and Commission regulations.

10. A corporation or its SSF may solicit contributions for the SSF from the corporation's executive or administrative personnel and their families, and where applicable, stockholders or members. 2 U.S.C. §§ 441b(b)(4)(A)(i), (b)(4)(C). After *Citizens United*, *EMILY's List*, *SpeechNow.org* and *Carey*, there is no constitutional justification for prohibiting an SSF from soliciting a member of its restricted class—but not other non-restricted class employees of the corporation—to make unlimited contributions to the *Carey* account of the SSF for the purpose of making independent expenditures.

11. An SSF may accept from the corporation or labor organization that serves as its connected organization, payments for the SSF's establishment, administration or solicitation costs. 2 U.S.C. § 441b(b)(2)(C). Such payments are not "contributions" under the Act and are not prohibited. *Id.* At the time this statutory dispensation was provided to corporations and labor unions, corporate and labor participation in federal elections—both contributions and independent expenditures—was strictly prohibited. See *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990); *rev'd in Citizens United v. FEC*, 130 S. Ct. 876 (2010).

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<sup>1</sup> The procedures for twice yearly solicitations include several requirements not applicable to restricted class personnel. The solicitations must be written and sent to employees at their residences and conducted in such a way that employees can make anonymous contributions of \$50 or less and the solicitor cannot determine who makes the contribution of \$50 or less. 2 U.S.C. § 441b(b)(4)(B); 11 CFR 114.6(c), (d).

12. Regulators and practitioners are unaccustomed to applying the dispensation to corporate administration of SSFs now that corporations may finance independent expenditures. But the dispensation only ever included funds to establish an SSF, administer its operating expenses and pay for its solicitations. *See* 2 U.S.C. § 441b(b)(2)(C). Payments “made for the purpose of influencing an election,” 2 U.S.C. § 431(8), that is, “contributions” to finance independent expenditures were never included in the dispensation and are not included today. Corporate contributions to an SSF to finance independent political speech—well beyond mere administration—would be considered a “contribution” to the SSF, fully reportable to the public by the SSF under 2 U.S.C. §434(a) (political committee reporting). This is made plain by another provision in the Act. Exempt from the definition of “contribution” is “any payment” by a corporation which, “under section 441b(b) of this title, would *not* constitute an expenditure by such corporation.” 2 U.S.C. § 431(8)(B)(vi)(emphasis added). Funds to make independent expenditures plainly would constitute an “expenditure” under the Act. Payments by STI to ELF to make independent expenditures would plainly constitute a “contribution,” fully reportable by ELF. Nonetheless, STI has no interest in financing independent expenditures, and ELF will not solicit STI for funds to ELF’s *Carey* account to finance independent expenditures. ELF will accept funds from STI only to pay the administrative expenses and solicitation costs of its *Carey* account.
13. The Federal Election Commission (“Commission”) failed to grant an affirmative response to plaintiffs’ advisory opinion request, which sought a declaration that ELF’s desire to set up a separate, non-contribution account in accord with *Carey* would be lawful. Because of this, ELF is presently stymied in its ability to accept contributions and speak out about candidates in the ongoing 2012 election cycle.

14. In failing to extend the rights enumerated in *Carey*, *SpeechNow.org*, *Citizens United* and *EMILY's List* to SSFs, the Commission has infringed upon the constitutionally protected rights of plaintiffs, caused and continues to cause injury by forcing plaintiffs to seek judicial relief to associate and speak freely.

### **JURISDICTION AND VENUE**

15. This Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 2201 as a challenge arising under the First Amendment to the Constitution of the United States, the Federal Election Campaign Act, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02.

16. Venue is proper in this Court under 28 U.S.C. §1391(e) because Defendant is an entity of the United States Government.

### **PARTIES**

17. Plaintiff Stop This Insanity, Inc. Employee Leadership Fund (“ELF”) is a political committee known as a separate segregated fund (“SSF” or “connected PAC”), 2 U.S.C. § 431(4)(B), of its connected organization, Stop the Insanity, Inc. ELF registered with the Federal Election Commission (“FEC” or “Commission”) on January 4, 2012.

18. Plaintiff Stop This Insanity, Inc. (“STI”) is a not-for-profit social welfare organization, incorporated in Arizona, whose exemption from taxation under §501(c)(4) of the Internal Revenue Code has been pending before the IRS for more than two years. STI is the connected organization of ELF.

19. Plaintiff Todd Cefaratti is a resident of the State of Arizona, the President of STI, and a member of the restricted class of ELF.

20. Plaintiff Glengary LLC is a limited liability corporation located in the State of Arizona.
21. Plaintiff Ladd Ehlinger is a resident of Georgia.
22. The Commission is the federal agency charged with enforcement of the Federal Election Campaign Act (“Act”) and is located in Washington, D.C.

### **STATEMENT OF FACTS**

23. Plaintiff Employee Leadership Fund (“ELF”) wants to make contributions to federal candidates in the 2012 election cycle subject to the limits, source restrictions and reporting requirements of the Act. It is also interested in making independent expenditures with funds unlimited as to amount and unrestricted as to source. ELF will not solicit foreign nationals (2 U.S.C. § 441e), national banks (2 U.S.C. § 441b(a)) or federal contractors. (2 U.S.C. § 441c(a)(2)). ELF’s administrative expenses will be paid by its connected organization, Stop the Insanity, Inc. (“STI”), or out of ELF’s own receipts.
24. ELF seeks to make Independent Expenditures calling for the election of Federal candidates, including Richard Mourdock (candidate for U.S. Senate in IN), Congressman Allen West (FL-07), and others who share the values of the restricted class employees of STI, and calling for the defeat of Federal candidates, including Congresswoman Nancy Pelosi (CA-08), Senator Sherrod Brown (incumbent OH), and President Barack Obama, who do not share those values.
25. Plaintiff Glengary LLC is a limited liability company interested in contributing at least \$10,000 to a *Carey* account located within ELF to finance independent expenditures in 2012.



26. Plaintiff Todd Cefaratti, a restricted class employee of STI, wants to contribute \$10,000 of his personal funds to the *Carey* account located within ELF to finance independent expenditures in 2012.
27. Plaintiff Ladd Ehlinger is a political consultant who is neither an employee of STI nor a member of STI's restricted class. Ehlinger is best described, *vis-a-vis* ELF and STI, as a member of the general public. Mr. Ehlinger shares the values of STI's restricted class employees and has generally expressed an interest in supporting their independent expenditures for and against the candidates supported by or oppose by ELF. STI wants to solicit Mr. Ehlinger to make a \$1,500 contribution to a *Carey* account to be located within ELF to finance independent expenditures.
28. In the wake of what most campaign-finance experts have deemed a sea change in election law through *Carey v FEC*, 791 F. Supp. 2d 121 (D.D.C. 2011), *SpeechNow.org v. Federal Election Commission*, 599 F.3d 686 (D.C. Cir 2010), *Citizens United v. FEC*, 130 S.Ct. 876 (2010), and *EMILY's List v. Federal Election Commission*, 581 F.3d 1 (D.C. Cir. 2009), plaintiffs hope to secure and make full use of their First Amendment rights. ELF, which already maintains a traditional contribution account subject to the limitations, prohibitions, and reporting requirements of the Act, seeks to establish a *Carey* account to finance independent expenditures. ELF would solicit and disclose unlimited *Carey* contributions from other individual, corporate, and union contributors into this *Carey* account. The independent expenditure campaigns that ELF seeks to engage are campaigns advocating the election or defeat of clearly identified candidates for federal office. Because the restricted class of STI is very small, part and parcel of ELF's ability to meaningfully engage in this speech is in its ability to raise funds to make independent expenditures to finance the cost of

producing such advertisements and publishing them *via* television, radio, print, and/or online media. Thus, ELF seeks, as recognized in *Carey*, *SpeechNow*, *EMILY's List* and *Citizens United*, to be free of contribution limits for contributions given for its independent expenditure campaigns.

29. While the *Carey* and *Citizens United* courts could not have been clearer establishing and protecting these rights, the Commission refuses to extend these rights to SSFs such as ELF. The continued and unjustified stonewalling by the Commission has caused and continues to cause ongoing injuries to the would-be speakers before this court.

***The Advisory Opinion Request***

30. On January, 4 2012, Stop This Insanity, Inc. Employee Leadership Fund submitted an advisory opinion request (“AOR”), attached as EXHIBIT A, to the Commission pursuant to 2 U.S.C. § 437f. ELF’s AOR asked:

- a. May a connected PAC establish a non-contribution account (*Carey* account) to solicit and accept contributions from the general public, corporations and unions (*Carey* contributions) not subject to the restrictions of 2 U.S.C. § 441b(b)(4)(A)(i) and 2 U.S.C. § 441b(b)(4)(B)? and
- b. How must ELF report the administrative and operating expenses paid by STI, if any, in connection with ELF’s *Carey* account, particularly where such expenses may not be readily determinable?

31. Pursuant to 11 C.F.R. § 112.1, the Commission accepted the AOR for review, assigned it AOR number 2012-01, and posted it on the Commission’s website for public commentary.

32. On February 17, 2012, the Commission’s general counsel issued a draft advisory opinion in response to ELF’s AOR. The draft advisory opinion, Draft A, concluded that the Commission is compelled by judicial decisions to hold that entities are permitted to establish non-contribution accounts or *Carey* accounts to finance independent expenditures. Thus, Draft A concluded that ELF may establish a separate, *Carey* account, into which it may

receive unlimited contributions for the purpose of financing its independent expenditure activity. This “Draft A” advisory opinion is included as EXHIBIT B.

33. An alternate draft, Draft B, was issued on February 17, 2012 and concluded that the Act and Commission regulations prohibit STI and ELF from establishing a *Carey* account for ELF that would receive unlimited contributions solicited from all STI employees and the general public for the purpose of financing independent expenditures. The alternative “Draft B” advisory opinion is included as EXHIBIT C.
34. On March 1, 2012, at an open meeting of the Commission, the Commission failed by a vote of 3-3 to approve Draft A. The Commission also failed by a vote of 3-3 to approve Draft B.
35. Pursuant to 11 C.F.R. § 112.4(a), the Commission certified on March 2, 2012 that it was unable to approve ELF’s AOR because it lacked the necessary four votes. *See generally* 2 U.S.C. §§ 437g(a)(2), (a)(4)(C) and (a)(6)(A). This certification is included as EXHIBIT D. The Commission’s failure to affirmatively provide a four-vote, binding advisory opinion in response to ELF’s request carries the equivalent legal effect that its proposed actions would be invalid under the Act and subject the organization to civil or criminal penalties under 2 U.S.C. § 437g for speaking out about candidates and otherwise engaging in political association.
36. The Commission's refusal to issue an advisory opinion deprives plaintiffs of a legal reliance defense that they could otherwise receive under 2 U.S.C. § 437f(c). The advisory opinion process in this matter is complete and deprived plaintiffs of a legal right – to engage freely in constitutionally protected speech and association. *See Unity 08 v. Federal Election Commission*, 596 F.3d 861 (D.C. Cir. 2010) (“parties are commonly not required to violate an agency's legal position and risk an enforcement proceeding before they may seek judicial

review”); *see also Democratic Senatorial Campaign Committee v. Federal Election Commission*, 918 F. Supp. 1 (D.D.C. 1994).

***Ensuing Harm to Plaintiffs***

37. At the time of filing the advisory opinion request, several primary elections were less than 60 days away. ELF filed its request as promptly as possible to ensure that its planned speech and association would be deemed lawful under the Act and related regulations. More than 40 days later, the Commission decided not to issue an advisory opinion. Given that the Commission could not issue a definitive statement concerning the legality of ELF’s planned actions, ELF was required to mute itself and curtail its activities during the 2012 primary election cycle.

38. During the 2012 primary election cycle, ELF planned to deploy independent expenditure communications targeting for defeat those candidates who do not reflect the values of STI’s restricted class employees, including among others Senator Orrin Hatch of Utah and Dick Lugar of Indiana. While ELF was free to endorse its preferred candidates, 2 U.S.C. §§ 441a and 441b curtailed the class of persons from whom ELF could solicit contributions, as well as the size of these contributions. Because the FEC did not permit ELF to accept unlimited contributions to fund its independent expenditures, ELF has been unable to gather the resources necessary to run independent expenditure campaigns and to be heard during many races in the 2012 primary and general election cycles.

***Ongoing Harm to Plaintiffs***

39. As soon as possible, and certainly before the 2012 general election, ELF would like to make independent expenditures from a *Carey* Account expressly advocating for or against clearly identified candidates of its choice. *See* Exhibit E, contract for production of advertisements.

40. ELF would like to make additional independent expenditures in the months leading up to the 2012 general election based on issues and candidates that present themselves. Without the ability to solicit unlimited contributions to fund such communications, it will not be able to speak during the 2012 electoral season. Without an immediate ruling from this court, it will not possess the necessary time to fundraise and generate support for its message from likeminded individuals.
41. As soon as possible, and certainly before the 2012 general election, ELF would like to solicit contributions for its independent expenditures from more persons than the individuals in its restricted class and in amounts greater than \$5,000.00 per calendar year. ELF has contacted donors willing to give more than \$5,000.00 in single contributions to fund independent expenditures, but has not solicited or accepted such amounts due to the effect of 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3). In addition, ELF has not solicited contributions from the general public, though not employees not in the restricted class of ELF, because of the solicitation restrictions at 2 U.S.C. § 441b(b)(4)(A). Nor has ELF solicited unlimited contributions to a *Carey* account from members of its restricted class.
42. As soon as possible, and certainly before the 2012 primary and general elections, Plaintiffs Todd Cefaratti, Ladd Ehlinger and Glengary LLC would like to make *Carey* contributions to ELF to finance independent expenditures
43. ELF would like to solicit *Carey* contributions in the amount of \$1,500 or more from Ladd Ehlinger, a member of the general public, despite the prohibition at 2 U.S.C. § 441b(b)(4). ELF also would like to solicit contributions greater than \$5,000 to a *Carey* account from Todd Cefaratti, a member of ELF's restricted class, to finance independent expenditures.

44. As soon as possible, and certainly before the 2012 general election, ELF would like to receive contributions to fund contributions, subject to source and amount limits found at 2 U.S.C. §§ 441a(a)(1)(C) and (2)(C), to favored candidates for federal office. Because it plans to make unlimited independent expenditures while receiving unlimited contributions for them, current operation and interpretation of the law by the Commission prohibits it from concurrently soliciting and receiving limited contributions.

***ELF's Structure and Operations***

45. ELF does not coordinate any of its activities with candidates or national, state, district or local political party committees or their agents as defined in 2 U.S.C. §§ 441a(a)(7)(B) and (C); 11 C.F.R. 109.21 *et seq.* In addition, ELF does not and will not coordinate its activities with other political committees.

46. ELF's expenditures for advertisements will be "independent expenditures" under 2 U.S.C. § 431(17), defined as expenditures made by a person "expressly advocating the election or defeat of a clearly identified candidate" that are "not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized [campaign] committee, or their agents, or a political party committee or its agents."

47. ELF has not yet solicited or accepted any contributions in excess of the \$5000 limit imposed by 2 U.S.C. § 441a(a)(1)(C), because doing so would subject it to civil and criminal penalties. 2 U.S.C. § 437g(d).

48. The solicitation prohibitions contained in 2 U.S.C. § 441b(b)(4)(A)(i) prevent ELF from accepting the contributions from Ladd Ehlinger as described in paragraphs 41 and 42 above.

49. The contribution limits contained in 2 U.S.C. § 441a(a)(1)(C) and 441a(a)(3) prevent ELF from soliciting additional *Carey* contributions above those limits for its *Carey* account.

50. Even if ELF, with its very limited restricted class, could somehow raise sufficient sums in increments of \$5,000 or less per donor per calendar year to pay for its advertisements, the contribution limits contained in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) would, by making it harder to gather funds, limit the type and number of times it could run advertisements. The limits would also diminish ELF's ability to run additional advertisements concerning other federal candidates in other races. This constitutes a direct impediment on ELF's rights and that of its donors to association and speech.
51. ELF will face a credible threat of prosecution if it solicits or accepts contributions to a *Carey* account in excess of the limits contained in 2 U.S.C. §§441a(a)(1)(C) and 441a(a)(3) to fund its advertisements as described herein.
52. ELF will face a credible threat of prosecution if its solicits contributions to a *Carey* account in derogation of the restriction at 2 U.S.C. § 441b(b)(4)(A)(i).

**COUNT 1**  
**Contribution Limits — ELF**

53. Plaintiffs re-allege and incorporate by reference all of the allegations contained in all of the preceding paragraphs.
54. The application of the contribution limits contained in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) to ELF's independent expenditure communications severely burden its right to freedom of speech. In application, these provisions act as expenditure limits, denying ELF the ability to speak effectively and efficiently.
55. 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) are the functional equivalent of a speech ban imposed by the FEC against certain groups of individuals. As the Supreme Court noted in *Buckley v. Valeo*, 424 U.S. 1, 19 n.18 (1976), "Being free to engage in unlimited political

expression subject to a ceiling on expenditures is like being free to drive an automobile as far and as often as one desires on a single tank of gasoline.” The FEC imposes this limit against certain groups of individuals wishing to speak out about candidates for public office without constitutional support.

56. ELF has prepared advertisements calling for the defeat of candidates for federal office and wishes to distribute those advertisements in the state and district in which those candidates are running for office. But for the Commission’s unjustified interpretation of law, ELF is prepared to run independent expenditures in the Ohio to defeat U.S. Senator Sherrod Brown and other federal candidates. *See* EXHIBIT F.
57. ELF would like to produce and broadcast additional advertisements calling for the election or defeat of candidates for federal office in the 2012 election cycle and in future election cycles.
58. ELF has donors who are ready, willing, and able to donate more than \$5,000 each to finance its advertisements calling for the election or defeat of candidates for federal office as described herein.
59. Under 2 U.S.C. §§ 431(8), 441a(a)(1)(C), 441a(a)(3), and the FEC’s regulations, as interpreted and applied by the FEC, in contradistinction to the First Amendment and opinions of the D.C. Circuit Court of Appeals in *EMILY’s List v. FEC*, *SpeechNow.org v. FEC*, and *Carey v. FEC*, 791 F. Supp. 2d 121 (D. D.C. 2011), ELF is prohibited from accepting these and other contributions that exceed the limits contained in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) that are made to finance its advertisements as described herein.
60. The application of the contribution limits contained in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) to ELF’s independent expenditure communications severely burden its right to



associate with its potential donors by placing constitutionally unjustified limits on how much money it may receive from likeminded individuals.

61. ELF poses no threat of corruption or its appearance because all of its contributions to candidates, party committees or the hard money accounts of other PACs will be made from a separate traditional account comprised of funds received from individuals in amounts of \$5,000 or less. It will pay the expense of administering its contributions to candidates from the same account, or through STI as is permitted of an SSF. See 2 U.S.C. § 441b(b)(2)(C) Independent expenditures will be made from a separate *Carey* account.
62. The application of contribution limits contained in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) to ELF's *Carey* account violates its contributors' rights to freedom of speech and association under the First Amendment. By denying ELF's contributors the meaningful ability to associate and speak through the act of contributing in furtherance of their political ideas, its constitutional rights are abridged.
63. As recognized by the District of Columbia Circuit Court of Appeals, associations of individuals wishing to speak out about candidates for federal office are "constitutionally entitled to raise and spend unlimited money in support of candidates for elected office." *EMILY'S List*, 581 F.3d at 9.
64. It is never constitutionally permissible to restrict the amount of money individuals may contribute to an organization that makes independent expenditures. See, e.g., *Carey v. FEC*, 791 F. Supp. 2d 121 (D. D.C. 2011), *EMILY'S List*, 583 F.3d 1 (D.C. Cir. 2009); *SpeechNow.org*, 599 F.3d 686 (D.C. Cir. 2010) (en banc); *N.C. Right to Life, Inc. v. Leake*, 525 F.3d 274 (4th Cir. 2008). As a result, 2 U.S.C. §§ 441a(a)(1)(C), 441a(a)(3), and the

FEC's regulations, as interpreted and applied by the FEC must necessarily fail to survive constitutional scrutiny.

**COUNT 2**  
**Contribution Limits—Individual Plaintiffs**

65. Plaintiffs re-allege and incorporate by reference all of the allegations contained in all of the preceding paragraphs.
66. Plaintiff Ladd Ehlinger, a member of the general public and not a member of ELF's restricted class, is able to be solicited to contribute more than \$1,500 to finance ELF's independent expenditures.
67. Plaintiff Todd Cefaratti, a member of ELF's restricted class, is ready, willing, and able to contribute more than \$5,000 to finance ELF's advertisements as described herein.
68. Mr. Cefaratti would like to make additional contributions in the future to finance ELF's advertisements as described herein and as may arise in future circumstances.
69. Plaintiff Glengary LLC is ready, willing and able to contribute more than \$5,000 of its corporate treasury to finance ELF's independent expenditures.
70. Glengary LLC would like to make additional contributions in the future to finance ELF's advertisements as described herein and as may arise in future circumstances.
71. Under 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) and the FEC's regulations, as incorrectly interpreted and applied by the FEC, in contradistinction to the First Amendment and opinions of the D.C. Circuit Court of Appeals in *EMILY's List* and *SpeechNow.org*, Plaintiffs Glengary LLC and Ehlinger are prohibited from making any contributions to ELF at all, *see* Count 3, *infra*, and Plaintiff Cefaratti is prohibited from making a contribution that would

exceed \$5,000 in any calendar year even if made and used solely to finance independent expenditures by ELF.

72. Application of the contribution limits contained in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) to Plaintiffs severely burdens their rights to associate with and speak *via* ELF, and to associate with other contributors. As noted by the District of Columbia Circuit Court of Appeals, 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.” *EMILY’s List*, 581 F.3d at 10.
73. The application of the contribution limits contained in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) severely burden Plaintiffs’ rights to freedom of speech and association. Indeed, organizations like ELF “offer an opportunity for ordinary citizens to band together to speak on the issue or issues most important to them.” *EMILY’s List*, 581 F.3d at 11 (internal citation omitted).
74. Plaintiffs’ contributions to a *Carey* account located within ELF pose no threat of corruption or its appearance because ELF’s contributions to candidates, party committees or the hard money accounts of other PACs will be made from a separate traditional account comprised of funds received from restricted class members only in amounts of \$5,000 or less. Independent expenditures will be made from a separate *Carey* account.
75. The application of contribution limits contained in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) as applied to ELF and to Plaintiffs Todd Cefaratti, Ladd Ehlinger and Glengary LLC violate their rights to freedom of speech and association under the First Amendment.

**COUNT 3**  
**Solicitation Restrictions – ELF and Individual Plaintiffs**

76. Plaintiffs re-allege and incorporate by reference all of the allegations contained in all of the preceding paragraphs.
77. ELF would like to solicit *Carey* contributions from Ladd Ehlinger, a member of the general public, to a *Carey* account that would finance ELF's independent expenditures. However, the solicitations restrictions at 2 U.S.C. § 441b(b)(4) prevent an SSF like ELF from soliciting the general public (outside of the restricted class). ELF has no interest in soliciting contributions from employees of its connected organization STI who are not already members of the restricted class, except as provided under 2 U.S.C. § 441b(b)(4)(B).
78. ELF seeks to solicit *Carey* contributions from Glengary LLC, a corporation and not a member of ELF's restricted class, to a *Carey* account that would finance independent expenditures. However, the solicitations restrictions at 2 U.S.C. § 441b(b)(4) prevent an SSF like ELF from soliciting the general public (outside of the restricted class).
79. ELF has no interest in soliciting contributions to a *Carey* account from the general treasury funds of STI.

**PRAYER FOR RELIEF**

Wherefore, Plaintiff prays for the following relief:

1. A declaratory judgment that the contribution limits contained in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3), as well as any applicable rules and regulations regarding these provisions, are unconstitutional as applied to ELFs *Carey* Account;
2. A declaratory judgment that the contribution limits contained in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3), as well as applicable rules and regulations regarding those

provisions, are unconstitutional as applied to any *Carey* Contributions that the individual Plaintiffs and other supporters wish to make to ELF for its independent advertisements as described herein;

3. A declaratory judgment that the prohibition on soliciting beyond the restricted class of an SSF like ELF, in 2 U.S.C. § 441b(b)(4)(A)(i), is unconstitutional as-applied to soliciting *Carey* contributions from Ladd Ehlinger and other individuals in the general public—other than soliciting the non-restricted class employees of STI not more than twice per year, see 2 U.S.C. § 441b(b)(4)(B)—for contributions to a *Carey* account to finance independent expenditures.
4. A declaratory judgment that the prohibition on soliciting beyond the restricted class of an SSF like ELF, at 2 U.S.C. § 441b(b)(4)(A)(i), is unconstitutional as-applied to soliciting Glengary LLC to contribute to a *Carey* account to finance independent expenditures.
5. Preliminary and permanent injunctions enjoining Defendant FEC from enforcing §§ 441a(a)(1)(C), 441a(a)(3), and 441b(b)(4) as described in this complaint, as well as any applicable rules and regulations regarding those provisions, against ELF;
6. Preliminary and permanent injunctions enjoining Defendant FEC from enforcing 2 U.S.C. §§ 441a(a)(1)(C), 441a(a)(3), and 441b(b)(4) as described in this complaint, as well as any applicable rules and regulations regarding those provisions, against the individual Plaintiffs and ELF's other supporters for any *Carey* contributions they may make to a *Carey* Account established by ELF for independent advertisements as described herein;
7. An award of nominal damages of \$1 for the violation of Plaintiff's constitutional rights;
8. Costs and attorney's fees pursuant to any applicable statute or authority;

9. Any other relief that the Court deems just and appropriate.

Date this 10th day of July, 2012.

Respectfully submitted,

Stephen M. Hoersting\*

/s/ Dan Backer  
Dan Backer (D.C. Bar No. 996641)  
DB CAPITOL STRATEGIES, PLLC  
209 Pennsylvania Avenue SE, Suite 2109  
Washington, DC 20003  
202. 210.5431  
202. 478.0750 facsimile  
[shoersting@dbcapitolstrategies.com](mailto:shoersting@dbcapitolstrategies.com)  
[dbacker@dbcapitolstrategies.com](mailto:dbacker@dbcapitolstrategies.com)

*Attorneys for Plaintiffs*

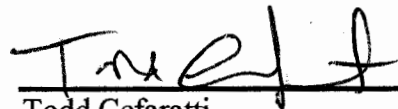
\*Motion for *Pro Hac Vice* to be filed.

**VERIFICATION**

I, Todd Cefaratti, declare as follows:

1. My name is Todd Cefaratti.
2. I am the President of STI, and a Member of the restricted class of ELF
3. I have personal knowledge of the operations of the Employee Leadership Fund and its connected organization, Stop This Insanity, Inc., including those set out in this Complaint, and if called upon to testify I would testify competently as to matters stated herein.
4. I verify under penalty of perjury under the laws of the United States of America that the factual statements in this Complaint concerning the Employee Leadership Fund and Stop This Insanity, Inc. are true and correct.

Executed on July 5, 2012.

  
\_\_\_\_\_  
Todd Cefaratti

**VERIFICATION**

I, Ron Dove, declare as follows:

1. My name is Ron Dove.
2. I am an officer of Glengary LLC.
3. I have personal knowledge of the operations of the Glengary LLC, including those set out in this Complaint, and if called upon to testify I would testify competently as to matters stated herein.
4. I verify under penalty of perjury under the laws of the United States of America that the factual statements in this Complaint concerning Glengary LLC are true and correct.

Executed on July 5, 2012.



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Ron Dove



**VERIFICATION**

I, Ladd Ehlinger, declare as follows:

1. My name is Ladd Ehlinger.
2. I am not a Member of the restricted class of ELF
3. I have personal knowledge of the statements made with regard to my interest in supporting independent expenditures by ELF, including those set out in this Complaint, and if called upon to testify I would testify competently as to matters stated herein.
4. I verify under penalty of perjury under the laws of the United States of America that the factual statements in this Complaint concerning my interest in contributing \$1,500 to ELF are true and correct.

Executed on July <sup>5<sup>th</sup></sup> 2012.

  
Ladd Ehlinger

**CERTIFICATE OF SERVICE**

I hereby certify that on this 10<sup>th</sup> day of July 2012, I caused to be served the Verified Complaint and accompanying Exhibits, the Motion for Preliminary Injunction with proposed order, and the Memorandum of Law in Support of the Motion for Preliminary Injunction by postage prepaid, first class mail, upon the following persons:

FEDERAL ELECTION COMMISSION  
999 E Street, NW  
Washington, DC 20436  
(202) 694-1650  
Civil Process Clerk

UNITED STATES ATTORNEY'S OFFICE  
501 Third Street, NW  
Washington, DC 20530  
Attorney General Eric H. Holder

U.S. DEPARTMENT OF JUSTICE  
950 Pennsylvania Ave. NW  
Washington, DC 20530.

Respectfully submitted,

/s/ Dan Backer

Dan Backer (D.C. Bar No. 996641)  
DB CAPITOL STRATEGIES, PLLC  
209 Pennsylvania Avenue SE, Suite 2109  
Washington, DC 20003  
202. 210.5431  
202. 478.0750 facsimile  
[dbacker@dbcapitolstrategies.com](mailto:dbacker@dbcapitolstrategies.com)

*Attorney for Plaintiffs*