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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

February 17, 2012

**AGENDA ITEM**

**MEMORANDUM**

TO: The Commission

For Meeting of 3-1-12

FROM: Anthony Herman *AH*  
General Counsel

Kevin Deeley *KD*  
Acting Associate General Counsel

Robert M. Knop *RMK*  
Assistant General Counsel

David C. Adkins *DA*  
Attorney

Neven F. Stipanovic *NFS*  
Attorney

Subject: AO 2012-01 (Stop this Insanity, Inc. Employee  
Leadership Fund) – Draft A

Attached is a proposed draft of the subject advisory opinion. We have been asked to have this draft placed on the Open Session agenda for March 1, 2012.

Attachment

1 ADVISORY OPINION 2012-01

2  
3 Dan Backer, Esq.  
4 DB Capitol Strategies PLLC  
5 209 Pennsylvania Avenue, SE  
6 Suite 2109  
7 Washington, DC 20003

**DRAFT A**

8  
9  
10 Dear Mr. Backer:

11  
12 We are responding to your advisory opinion request on behalf of Stop This  
13 Insanity, Inc. Employee Leadership Fund (“ELF”), the separate segregated fund of Stop  
14 This Insanity, Inc. (“STI”), concerning the application of the Federal Election Campaign  
15 Act (the “Act”) and Commission regulations to ELF’s plans to establish a non-  
16 contribution account. ELF plans to solicit for that account funds that are not subject to  
17 the limitations and prohibitions of 2 U.S.C. 441a(a)(1)(C) or 441B (“unlimited  
18 contributions”) from persons inside and outside of STI’s restricted class — including STI  
19 employees, other political committees, corporations, and labor organizations — for the  
20 purpose of financing independent expenditures.

21 The Commission concludes that ELF may establish a non-contribution account  
22 and solicit and accept unlimited contributions from individuals, other political  
23 committees, corporations, and labor organizations, STI itself, and STI’s restricted class.  
24 Solicitations for contributions to this account directed at STI employees who are not  
25 members of the restricted class, however, are subject to the existing restrictions on  
26 solicitations to such employees set forth in the Act and Commission regulations.

1 ***Background***

2 The facts presented in this advisory opinion are based on your letter received on  
3 January 4, 2012 and public disclosure reports filed with the Commission.

4 ELF is a separate segregated fund (“SSF”) that registered with the Commission as  
5 a political committee on January 4, 2012. ELF’s connected organization is STI, an  
6 Arizona-based<sup>1</sup> nonprofit social welfare organization exempt from taxation under section  
7 501(c)(4) of the Internal Revenue Code.<sup>2</sup>

8 At the present time, ELF maintains a single bank account into which it receives  
9 contributions that are subject to the limitations, prohibitions, and reporting requirements  
10 of the Act. ELF plans to use this account to make its direct contributions to candidates.  
11 To raise contributions for that account, STI will solicit funds from its restricted class of  
12 executive and administrative personnel and their families. It also may solicit funds from  
13 other STI employees twice per year. Costs for the establishment and administration of  
14 this account, as well as costs for solicitations, will be financed by STI.

15 ELF would like to establish and maintain a second Federal account, into which it  
16 would solicit unlimited contributions.<sup>3</sup> This non-contribution account would be used to  
17 finance independent expenditures. ELF plans to solicit and accept contributions for this  
18 account, at any time and without limitation, from STI’s employees, from STI itself, and  
19 from other persons, including other individuals, other political committees, corporations,

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<sup>1</sup> ELF uses as its mailing address the Washington, DC post office box of its counsel.

<sup>2</sup> STI itself was at one time registered as a political committee. After filing three quarterly reports, STI terminated its registration based on the view that its registration had been in error and that the organization had never met the requisite thresholds for political committee status.

<sup>3</sup> The Committee would not receive funds from foreign nationals, Federal contractors, national banks or corporations organized by authority of any law of Congress.

1 and labor organizations. As with ELF's existing account, the establishment,  
2 administration, and fundraising costs of the proposed non-contribution account would be  
3 financed at least in part by STI. To the extent ELF's two accounts jointly incur any  
4 administrative expenses, ELF plans to allocate those costs and ensure that the proposed  
5 non-contribution account pays an appropriately tailored share.

6 ***Questions Presented***

- 7 1. *May ELF establish a non-contribution account into which it receives unlimited*  
8 *contributions for the purpose of financing independent expenditures?*  
9 2. *From whom and how may ELF and STI solicit unlimited contributions to ELF's*  
10 *non-contribution account?*  
11 3. *Must ELF treat as contributions STI's payments for establishment,*  
12 *administration, and solicitation costs allocable to ELF's non-contribution*  
13 *account?*

14 ***Legal Analysis and Conclusions***

- 15 1. *May ELF establish a non-contribution account into which it receives unlimited*  
16 *contributions for the purpose of financing independent expenditures?*

17 Yes, ELF may establish a non-contribution account into which it receives  
18 unlimited contributions for the purpose of financing independent expenditures.

19 SSFs established under the provisions of section 441b(b) – such as ELF – are  
20 political committees. 2 U.S.C. 431(4)(B); 11 CFR 100.5(b). Political committees must  
21 organize, register, and report pursuant to the Act and Commission regulations. *See*  
22 2 U.S.C. 432, 433, 434; 11 CFR 102.1, .2,.7, 104.

1           The Act and Commission regulations limit contributions to a separate segregated  
2 fund and restrict solicitations on its behalf. A corporation or its SSF may solicit  
3 contributions to such fund from the corporation's stockholders and its executive or  
4 administrative personnel and their families.<sup>4</sup> 2 U.S.C. 441b(b)(4)(A)(i); 11 CFR  
5 114.5(g)(1). A corporation without capital stock may solicit contributions to its SSFs  
6 from the nonstock corporation's members. 2 U.S.C. 441b(b)(4)(C); 11 CFR 114.7.  
7 Twice yearly, a corporation or its SSF may make solicitations for voluntary political  
8 contributions to the SSF from the corporation's employees who are not executive or  
9 administrative personnel or stockholders, and from the families of those employees. 2  
10 U.S.C. 441b(b)(4)(B); 11 CFR 114.6. The procedures for such twice yearly solicitations  
11 include several requirements not applicable to solicitations to restricted class personnel.  
12 The solicitations must be written, sent to employees at their residences, and conducted in  
13 such a way that employees can make anonymous contributions of \$50 or less and the  
14 solicitor cannot determine who makes such a contribution. 2 U.S.C. 441b(b)(4)(B); 11  
15 CFR 114.6(c), (d). Solicitations by a corporation or its SSF to the general public are  
16 prohibited, *see* 2 U.S.C. 441b(b)(4)(A)(i); 11 CFR 114.5(g)(1), (i), although an SSF may  
17 accept unsolicited contributions from any person otherwise permitted by law to make a  
18 contribution. 11 CFR 114.5(j).

19           In addition to these restrictions, the Act and Commission regulations prohibit any  
20 individual from making contributions to an SSF that in the aggregate exceed \$5,000 per  
21 year, 2 U.S.C. 441a(a)(1)(C); 11 CFR 110.1(d), any multicandidate political committee

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<sup>4</sup> The Act and Commission regulations define "executive and administrative personnel" as (1) individuals who are employed by a corporation, (2) are paid on a salary rather than hourly basis, and (3) have "policymaking, managerial, professional, or supervisory responsibilities." 2 U.S.C. 441b(b)(7); 11 CFR 114.1(c).

1 from making contributions to an SSF that in the aggregate exceed \$5,000 per year, 2  
2 U.S.C. 441a(a)(2)(C), and any corporation or labor organization from making any  
3 contributions to an SSF at all. 2 U.S.C. 441b(a); 11 CFR 114.2(b)(1). Finally, the Act  
4 prohibits SSFs from knowingly accepting contributions in excess of these limitations. 2  
5 U.S.C. 441a(f).

6 In *EMILY's List v. FEC*, the U.S. Court of Appeals for the D.C. Circuit concluded  
7 that nonconnected political committees and other non-profit groups may raise and spend  
8 funds outside the limitations of the Act from individuals, other political committees,  
9 corporations, and labor organizations for the purpose of financing independent  
10 expenditures and other independent political activity. *EMILY's List v. FEC*, 581 F.3d 1,  
11 12 (D.C. Cir. 2009); *see also SpeechNow.org v. FEC*, 599 F.3d 686, 696 (D.C. Cir. 2010)  
12 (*en banc*) (striking down limitations on contributions from individuals to groups that  
13 make only independent expenditures); Advisory Opinion 2010-11 (Commonsense Ten).  
14 Courts have also held that nonconnected political committees and other non-profit groups  
15 may generally raise and spend unlimited sums on independent expenditures and make  
16 direct contributions to candidates with funds subject to the limitations, prohibitions, and  
17 reporting requirements of the Act, so long as the funds for those activities are maintained  
18 in separate bank accounts. *EMILY's List*, 581 F.3d at 12; *see also Carey v. FEC*, 791 F.  
19 Supp. 2d 121, 131 (D.D.C. 2011); Press Release, FEC Statement on Carey v. FEC:  
20 Reporting Guidance for Political Committees that Maintain a Non-Contribution Account  
21 (Oct. 5, 2011) (available at  
22 <http://www.fec.gov/press/Press2011/20111006postcarey.shtml>). These decisions are  
23 based on the principle that independent expenditures do not give rise to actual or apparent

1 *quid pro quo* corruption and therefore may not constitutionally be limited or proscribed.  
2 *Citizens United v. FEC*, 558 U.S. \_\_\_, 130 S. Ct. 876, 908, 913 (2010); *see also Buckley v.*  
3 *Valeo*, 424 U.S. 1, 25 (1976).

4         These decisions, however, did not directly address whether the Act’s source and  
5 amount limitations are constitutional as applied to the independent expenditure activity of  
6 an SSF – a political committee with a connected corporation or labor organization – or  
7 whether SSFs may make both contributions to candidates from funds subject to the Act’s  
8 limits and prohibitions and independent expenditures from funds not subject to the Act’s  
9 limits and prohibitions on corporate and labor organization contributions if using separate  
10 bank accounts. *See EMILY’s List*, 581 F.3d at 8 n.7 (“In referring to non-profit entities,  
11 we mean non-connected non-profit corporations . . . . ‘Non-connected’ means that the  
12 non-profit is not a candidate committee, a party committee, or a committee established by  
13 a corporation or labor union.”) (citing 11 CFR 106.6(a)); *see also Carey*, 791 F. Supp. 2d  
14 at 126 n.1.<sup>5</sup> Thus, whether SSFs may establish such accounts – and solicit unlimited  
15 funds for the purpose of financing independent expenditures – is an issue of first  
16 impression. The Commission’s answer is compelled by judicial decisions holding that  
17 the First Amendment requires that entities be permitted to establish such non-contribution  
18 accounts.

19         SSFs and nonconnected committees are different in certain respects. SSFs have  
20 connected organizations that can finance the SSF’s establishment, administration, and

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<sup>5</sup> *EMILY’s List* (at 8 n.7) discussed both entities that register with the Commission and those that do not. Leadership PACs may be “nonconnected committees” under the Commission’s regulations. 11 C.F.R. 100.5(a)(6). “Nonconnected committee” as used in this advisory opinion, however, refers only to entities that register with the Commission other than leadership PACs.

1 solicitation costs; nonconnected committees do not. SSF's are restricted under the Act in  
2 how and from whom they may solicit contributions. *But see infra* Parts B-D. Under the  
3 circumstances presented here, neither of these differences nor anything else inherent in  
4 the structure or operation of an SSF suggests that there is an enhanced threat of actual or  
5 apparent *quid pro quo* corruption when SSFs rather than nonconnected committees  
6 engage in independent expenditure activity using funds not subject to the Act's limits and  
7 prohibitions on corporate and labor organization contributions, while making direct  
8 contributions using a separate account.<sup>6</sup>

9 ELF proposes to organize itself like "hybrid" nonconnected political committees.  
10 It will have two accounts: (1) an account that accepts funds subject to the limitations,  
11 prohibitions, and reporting requirements of the Act for the purpose of making direct  
12 contributions to candidates, and (2) an account that accepts unlimited contributions for  
13 the purpose of financing independent expenditures. In light of the foregoing, the  
14 Commission concludes that ELF is not prohibited from establishing a separate non-  
15 contribution account, which is separate from its existing account and into which  
16 independently of candidates and parties it will, receive unlimited contributions for the  
17 purpose of financing its independent expenditure activity.<sup>7</sup>

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<sup>6</sup>In response to the *EMILY's List* decision, the Commission deleted regulations that applied with equal force to both nonconnected committees and SSFs. See Explanation and Justification for Final Rules on Funds Received in Response to Solicitations; Allocation of Expenses by Separate Segregated Funds and Nonconnected Committees, 75 FR 13223, 13223 (Mar. 19, 2010) ("The Commission agrees . . . that the [*EMILY's List*] court's holding applies to SSFs as well as to nonconnected committees.").

<sup>7</sup> ELF should report the activity of its non-contribution in accordance with Commission guidance regarding reporting of activity by the non-contribution accounts of nonconnected committees. See Press Release, FEC Statement on *Carey v. FEC*: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011), <http://www.fec.gov/press/Press2011/20111006postcarey.shtml>.



1           2. *From whom and how may ELF and STI solicit unlimited contributions to ELF's*  
2           *non-contribution account?*

3           ELF and STI may solicit unlimited contributions to ELF's non-contribution  
4 account from STI's restricted class, and from other persons, including individuals, other  
5 political committees, corporations, and labor organization. STI employees who are  
6 neither executive nor administrative personnel (and their family members), however, may  
7 be solicited only for contributions to ELF's non-contribution account in accordance with  
8 the "twice-yearly" procedures set forth in the Act and Commission regulations. Apart  
9 from assisting with overhead and solicitation costs, STI itself may also make  
10 contributions of unlimited size to ELF.

11           As discussed above, the Act and Commission regulations establish restrictions on  
12 the persons from whom a corporation or its SSF may solicit for contributions to the SSF.  
13 As explained below, recent court decisions have rendered many of these restrictions  
14 constitutionally infirm as applied to the solicitation of contributions to finance an SSF's  
15 independent expenditure activity. Although adjudication of constitutionality is generally  
16 outside an administrative agency's authority, *see, e.g., Johnson v. Robison*, 415 U.S. 361,  
17 368 (1974), the Commission is not required to enforce restrictions where they rest on  
18 principles plainly determined by the courts to be unconstitutional.

19           With that construct in mind, we analyze, in turn, ELF's and STI's ability to solicit  
20 unlimited contributions to ELF from the following persons: STI employees not within its  
21 restricted class; STI's restricted class; STI itself; and other persons, including individuals,  
22 other political committees, corporations, and labor organizations.

1           A.     STI Employees outside the Restricted Class

2           Under the Act and Commission regulations, twice yearly, a corporation or its SSF  
3 may make written solicitations for voluntary political contributions to the SSF from the  
4 corporation's employees who are not executive or administrative personnel or  
5 stockholders, and from the families of those employees. 2 U.S.C. 441b(b)(4)(B); 11 CFR  
6 114.6. The procedures for such twice yearly solicitations include several requirements  
7 not applicable to solicitations to restricted class personnel. The solicitations must be  
8 written and sent to employees at their residences and conducted in such a way that  
9 employees can make anonymous contributions of \$50 or less and the solicitor cannot  
10 determine who makes a contribution of \$50 or less. 2 U.S.C. 441b(b)(4)(B); 11 CFR  
11 114.6(c), (d).

12           Restrictions on solicitations to a corporation's "rank and file" employees were  
13 added to the Act in 1976 in response to a Commission advisory opinion. In that advisory  
14 opinion, the Commission had interpreted the Act to allow a corporation to solicit for its  
15 SSF contributions from all employees at any time and without limitation. *See* Advisory  
16 Opinion 1975-23 (Sun Oil Co.).

17           The legislative history of this 1976 amendment to the Act reveals that, in creating  
18 these limitations, members of Congress expressed at least three objectives: (1) to  
19 establish some semblance of parity between corporate and union solicitable classes, *see*  
20 122 CONG. REC. S3699 (daily ed. Mar. 17, 1976) (statement of Sen. Packwood); (2) to  
21 slow the proliferation of corporate and labor organization SSFs, *see* 122 CONG. REC.  
22 H2612 (daily ed. Mar. 31, 1976) (statement of Rep. Thompson); and (3) to ameliorate  
23 inherently coercive solicitations, *id.*

1           The third objective advances an important governmental interest.<sup>8</sup> As

2   Congressman Thompson explained:

3           [I]t is simply a fact that solicitations by an employer, no matter for what  
4           purpose, and no matter how well-intentioned, are psychologically  
5           coercive. The employee is going to be intimidated and coerced, because  
6           the entity soliciting the funds is, for all practical purposes, the same as, or  
7           closely related to the one which also gives the salary raises and  
8           promotions.

9  
10   *Id.*; *see also* 122 CONG. REC. S3700 (daily ed. Mar. 17, 1976) (statement of Sen.

11   Bumpers) (Even when there is not “overt pressure to either give or you will not

12   have a job next week . . . the pressure will be there, and that troubles me.”). In

13   short, these restrictions exist to protect “rank and file” employees from

14   solicitations that, in the judgment of Congress, are inherently coercive.

15           This important interest relied on by Congress – preventing employee coercion –

16   has not been addressed or disturbed by the courts. *Cf. Citizens United*, 130 S. Ct. at 903-

17   911 (addressing different government interests); *EMILY’s List*, 581 F.3d at 7-9 (same).

18   Accordingly, ELF must solicit STI employees who are not included in STI’s restricted

19   class within the parameters set forth at 2 U.S.C. 441b(b)(4)(B) and Commission

20   regulations.

21           B. STI’s Restricted Class

22           The Act and Commission regulations permit a corporation or its SSF to solicit

23   voluntary contributions to the SSF from its “restricted class” at any time. The restricted

24   class consists of the corporation’s executive and administrative personnel, its

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<sup>8</sup> The Commission thus need not address the other expressed purposes.

1 stockholders, and the families of such persons. 2 U.S.C. 441b(b)(4)(A)(i); 11 CFR  
2 114.1(c), 114.5(g)(1).<sup>9</sup>

3 Congress elected not to impose restrictions on solicitations directed to the  
4 restricted class. Accordingly, STI and ELF may solicit STI's restricted class — its  
5 executive and administrative employees and their families — at any time and without  
6 limitation for unlimited contributions to ELF's non-contribution account.<sup>10</sup>

7 C. STI

8 In addition to paying for overhead and fundraising costs, ELF also proposes to  
9 receive unlimited contributions of STI's general treasury funds to ELF's non-contribution  
10 account for the purpose of financing independent expenditures.<sup>11</sup>

11 Corporations are permitted to make contributions to political committees for the  
12 purpose of financing independent expenditures.<sup>12</sup> *See* Advisory Opinion 2010-11  
13 (Commonsense Ten) (concluding that “it necessarily follows” from the decisions in  
14 *Citizens United* and *SpeechNow* that a political committee may receive unlimited  
15 contributions from corporations, labor organizations, and political committees to finance

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<sup>9</sup> ELF does not indicate any plans to solicit funds from any members it may have. *See* 2 U.S.C. 441b(b)(4)(C). This opinion therefore does not reference members when referring to ELF's restricted class.

<sup>10</sup> Such solicitations may be made by ELF or STI to individuals who are part of the restricted class and may be for contributions in amounts outside the limitations of the Act. *See SpeechNow*, 599 F.3d at 696; *see also* Advisory Opinion 2010-11 (Commonsense Ten).

<sup>11</sup> The question presented addresses STI and ELF's ability to solicit contributions to ELF's non-contribution account. As applied to contributions from STI to ELF's non-contribution account, any such question would in effect amount to a question regarding whether STI could solicit itself. Therefore we analyze only whether contributions from STI to ELF's non-contribution account would be permissible and not whether any solicitation limits are permissible.

<sup>12</sup> Previously, contributions by a corporate connected organization to its SSF were prohibited under the prohibition on corporate contributions at 2 U.S.C. 441b. Support by a connected organization to its SSF was limited to the payment of costs associated with the establishment and administration of the SSF and costs associated with the solicitation of funds to the SSF. *See* 2 U.S.C. 441b(b)(2)(C).

1 its independent expenditures). It therefore follows that STI may make unlimited  
2 contributions at any time and without limitation to ELF's non-contribution account.

3 D. Other Persons

4 ELF also proposes to solicit to its non-contribution account unlimited  
5 contributions from individuals in the general public, other political committees,  
6 corporations, and labor organizations.

7 Under the Act, solicitations of contributions to SSFs directed at the general public  
8 have long been prohibited. Corporate-financed solicitations to the general public on  
9 behalf of an SSF have been proscribed on the basis that such solicitations are themselves  
10 prohibited corporate-financed expenditures. The Act's early legislative history speaks  
11 extensively to this point. *See, e.g.*, 117 CONG. REC. H43,379 (daily ed. Nov. 30, 1971)  
12 (statement of Rep. Hansen) (clarifying that the ban on corporate expenditures "draws a  
13 distinction between activities directed at the general public, which are prohibited, and  
14 communications by a corporation to its stockholders and their families . . . on any subject,  
15 which the courts have held is permitted"); *see also* Advisory Opinion 1975-23 (Sun Oil  
16 Co.) ("[T]he legislative history of the 1971 Act clearly states that general treasury money  
17 may not be used to solicit the general public."); *cf. United States v. CIO*, 335 U.S. 106  
18 (1948). Solicitations of contributions to SSFs directed at the general public that are  
19 financed with voluntary contributions are similarly prohibited. *See* 11 CFR 114.5(i); *see*  
20 *also* Advisory Opinion 1978-36 (National Nutritional Foods).

21 The Supreme Court initially upheld the Act's solicitation restrictions by  
22 corporations on behalf of SSFs. *FEC v. Nat'l Right to Work Comm.* ("NRWC"), 459 U.S.

1 197 (1982).<sup>13</sup> In *Citizens United*, however, the Court held that the Act’s prohibition on  
2 corporate independent expenditures was unconstitutional. *See Citizens United*, 130 S. Ct.  
3 at 913. And in the process of invalidating the ban on corporate expenditures, the Court  
4 directly rejected the governmental interests that had provided the basis for the prohibition  
5 on corporate-financed solicitations directed at the general public for contributions to its  
6 SSF for independent expenditures.<sup>14</sup> *Cf. Nat’l Right to Work*, 459 U.S. at 207-10  
7 (upholding restrictions by an SSF to non-members as “sufficiently tailored” to “ensure  
8 that substantial aggregations of wealth amassed by the special advantages which go with  
9 the corporate form or organization should not be converted into political ‘war chests’”  
10 and to “protect the individuals who have paid money into a corporation or union for  
11 purposes other than the support of candidates from having that money used to support  
12 political candidates to whom they may be opposed”). The prohibition on public  
13 solicitations to an SSF’s non-contribution account is constitutionally untenable in light of  
14 *Citizens United* and *EMILY’s List*.

15 The Commission is not aware of any other interest that can be advanced to justify  
16 a continued prohibition on public solicitations by either a corporation or its SSF for  
17 contributions to the SSF’s non-contribution account. To the extent such solicitations are

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<sup>13</sup> The Court was asked in *NRWC* to interpret the meaning of the term “member” and, in effect, the scope of the statutory provision restricting solicitations by nonstock corporations to nonmembers for contributions to the corporation’s SSF. *See* 459 U.S. 197, 198-99 (1982); *see also* 2 U.S.C. 441b(b)(4)(C); 11 CFR 114.2(e). The Court found the restriction posed no First Amendment problems because it was a means of advancing the prohibition on corporate expenditures and contributions. *Id.* at 208.

<sup>14</sup> *Citizens United* disclaimed the “relevance” of *NRWC* to the question of corporate-funded independent expenditures, characterizing *NRWC*’s holding as being “no more than that a restriction on a corporation’s ability to solicit funds for its segregated PAC, which made direct contributions to candidates, did not violate the First Amendment.” *Citizens United*, 130 S. Ct. at 909. In light of *EMILY’s List*, *NRWC*’s holding is similarly not relevant here because ELF will use no funds from the non-contribution account to make direct contributions to candidates.

1 conducted independently from a candidate or party, they would not give rise to actual or  
2 apparent *quid pro quo* corruption and may not constitutionally be limited.

3 Accordingly, ELF's plan to solicit contributions to its non-contribution account  
4 from members of the general public is permissible. Such contributions may be solicited  
5 and accepted in unlimited amounts from individuals, other political committees,  
6 corporations, and labor organizations, at any time and without limitation.<sup>15</sup>

7 3. *Must ELF treat as contributions STI's payments for establishment,*  
8 *administration, and solicitation costs allocable to ELF's non-contribution*  
9 *account?*

10 No, payments by STI for costs associated with the establishment, administration,  
11 or solicitation of contributions to ELF's Carey account would not be contributions and  
12 would not need to be reported by ELF.

13 A corporation's payment of its SSF's establishment, administration, and  
14 solicitation costs are exempt from the applicable definition of contribution. *See* 2 U.S.C.  
15 441b(b)(2)(C); 11 CFR 114.5(b); *see also* Advisory Opinion 1979-27 (Committee for  
16 Thorough Agricultural Political Education).

17 The Commission has concluded that a corporation's payment of an independent  
18 expenditure-only political committee's establishment, administration, and solicitation  
19 expenses would not be exempt from the definition of contribution. *See* Advisory Opinion  
20 2010-09 (Club for Growth). This conclusion, however, was premised on the fact that the

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<sup>15</sup> There is a possibility that STI employees who are not part of the restricted class may incidentally be solicited for contributions to ELF's non-contribution account as part of a solicitation directed at the general public. So long as such solicitations are sent to the general public and are not targeted to employees, they would not constitute violations of the solicitation restrictions. *Cf* 11 C.F.R. 114.5(h) (accidental or inadvertent solicitations not violations).

1 independent expenditure-only political committee was not the SSF of the corporation  
2 paying such expenses. *Id.*

3 Here, ELF's proposed non-contribution account would be an account of STI's  
4 SSF. Accordingly, STI – as ELF's connected organization – may pay ELF's  
5 establishment, administration, and solicitation expenses without a resultant contribution.  
6 *See* 2 U.S.C. 441b(b)(2)(C). Payments from STI to ELF for these purposes would  
7 therefore need not be reported, nor would ELF need to allocate such expenses between its  
8 existing and non-contribution accounts.

9 This response constitutes an advisory opinion concerning the application of the  
10 Act and Commission regulations to the specific transaction or activity set forth in your  
11 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any  
12 of the facts or assumptions presented, and such facts or assumptions are material to a  
13 conclusion presented in this advisory opinion, then the requestor may not rely on that  
14 conclusion as support for its proposed activity. Any person involved in any specific  
15 transaction or activity which is indistinguishable in all its material aspects from the  
16 transaction or activity with respect to which this advisory opinion is rendered may rely on  
17 this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or  
18 conclusions in this advisory opinion may be affected by subsequent developments in the  
19 law including, but not limited to, statutes, regulations, advisory opinions, and case law.



1 The cited advisory opinions are available on the Commission's website, [www.fec.gov](http://www.fec.gov), or  
2 directly from the Commission's Advisory Opinion searchable database at  
3 <http://www.fec.gov/searchao>.

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11

On behalf of the Commission,

Caroline Hunter  
Chair  
Federal Election Commission