

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

Case No. _____-Civ

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

WE THE PEOPLE, INC. OF THE UNITED STATES,

Defendant.

COMPLAINT

Plaintiff, United States Securities and Exchange Commission (“SEC”), states and alleges as follows against Defendant We The People, Inc. of The United States (“We The People”):

SUMMARY OF THE CASE

1. We The People, a purported charitable organization based in Tallahassee, Florida, defrauded investors by making false and misleading statements in connection with the offer, sale, and purchase of securities. Enticed by We The People’s scheme, investors transferred assets – stocks, annuities, real estate, or cash – to We The People in exchange for an investment product that We The People called a “tax-deductible gift annuity” or “charitable gift annuity” (“CGA”). From June 2008 through April 2012, We The People raised over \$75 million in assets from approximately 400 investors in over 30 states, almost all of whom are elderly.

2. We The People’s marketing and promotional materials for the CGA offering contained misrepresentations and omissions of material fact, including:

- false statements regarding the value of the CGA that investors received in exchange for the assets transferred to We The People, falsely claiming that investors would receive the full accumulated value of their investments;
- false statements regarding the safety and security of the CGA program, falsely claiming that We The People held in trust a reserve equal to 110% of its liabilities and that it obtained reinsurance;
- omissions regarding the indictments and regulatory sanctions issued against two We The People senior executives, Richard and Susan Olive, for fraudulently selling similar products at a company known as National Foundation of America (“NFOA”); and
- omissions regarding the sizable commissions We The People paid to third-party promoters on the sale of its products, hiding that these commissions totaled several million dollars.

We The People also made false public statements regarding the amount of charitable contributions it made, significantly exaggerating those contributions. By so acting, We The People violated the anti-fraud provisions of federal securities laws and offered and sold securities in violation of the registration provisions of the federal securities laws.

3. The SEC brings this civil enforcement action seeking permanent injunctions and other appropriate relief, which may include disgorgement plus prejudgment and postjudgment interest, for violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§ 77e(a), 77e(c), 77q(a)]; Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78j(b) and 78o(a)]; and Rule 10b-5 [17 C.F.R. §240.10b-5].

JURISDICTION AND VENUE

4. The Court has jurisdiction pursuant to Securities Act Sections 20(b) and 22(a) [15 U.S.C. §§ 77t(b) and 77v(a)], and Exchange Act Sections 21(d) and (e), and 27 [15 U.S.C. §§ 78u(d) and (e) and 78aa].

5. In connection with the acts described in this Complaint, Defendant used the mails, other instruments of communication in interstate commerce, and means or instrumentalities of interstate commerce.

6. Venue lies in this Court pursuant to Securities Act Section 22(a) [15 U.S.C. § 77v(a)], Exchange Act Section 27 [15 U.S.C. § 78aa], and 28 U.S.C. § 1391(b) (2). Certain of the acts and practices described in this Complaint occurred in the Southern District of Florida, and certain investors in We The People reside in the Southern District of Florida. Further, Defendant has consented to venue in this Court.

DEFENDANT

7. **We The People** is a Massachusetts corporation registered under Section 501(c)(3) of the Internal Revenue Code with its principal place of business at 2636 Mitcham Drive, Tallahassee, Florida 32308.

FACTUAL BACKGROUND

I. The Olives Join We The People

8. We The People was founded in 1987 and originally operated as non-profit organization that promoted nuclear safety. However, from the late 1990s until 2008, We The People was an entity that had no assets and limited operations. We The People became significantly more active in March 2008, when it hired Richard Olive and his wife Susan Olive to raise money for We The People.

9. In March 2008, the Olives signed a joint employment agreement with We The People. Under the agreement, We The People agreed to pay the Olives commissions. Originally, We The People agreed to pay the Olives a combined 1.5% commission. In March 2009, We The People increased the combined percentage to 2.5%. And in June 2009, the Olives

started receiving a base salary as well as a combined .75% commission. During their period of employment, March 2008 to April 2012, the Olives were paid over \$1.1 million in salary and commissions.

10. At the time they were hired by We The People, the Olives were subject to numerous adverse legal proceedings related to their previous business. The Olives ran an investment program at NFOA, a purported charity based in Tennessee, which involved having elderly individuals transferring assets to NFOA (typically a commercial annuity) and, in exchange for the transferred assets, NFOA would issue investors a product similar to We The People's CGAs.

11. By the time the Olives joined We The People, regulators in several states, including, but not limited to, Alabama, California, Florida, Iowa, Tennessee, Texas, and Washington had determined that NFOA's products were not properly registered, or that NFOA made misleading statements to investors in connection with the sale of the products. For example,

- In April 2007, the State of Florida determined that Richard Olive and Susan Olive were engaged in unauthorized and illegal transactions through NFOA and presented "an immediate danger to the public health, safety or welfare of Florida consumers."
- In May 2007, the Texas State Securities Board issued a cease and desist order which found that NFOA's products were "securities" and that the securities were sold illegally both because they were unregistered and because NFOA and Richard Olive "intentionally" failed to disclose "material facts" in connection with the sales of those securities.
- Also in May 2007, the State of Tennessee brought a civil suit against NFOA and the Olives, among others, for selling products without the proper licenses and registration. Shortly thereafter, the court appointed a receiver to wind down NFOA's affairs.

12. The Olives' conduct at NFOA also resulted in criminal charges. In February 2010, while they were employed by We The People, a Tennessee grand jury indicted the Olives

on multiple theft charges in connection with their sale of investment products at NFOA. Then, in March 2012, a federal grand jury in the Middle District of Tennessee indicted Richard Olive on several fraud counts arising out of his actions at NFOA.¹

II. We The People's Offer and Sale of CGAs

13. After the Olives arrived at We The People, beginning on or about May 2008 and continuing through April 2012, We The People solicited investors to purchase interests in investment contracts, referred to by We The People as CGAs, which were securities, through an asset exchange. Specifically, We The People offered to have investors exchange various assets – including stocks, annuities, real estate, or cash – for a CGA. Under the CGA agreement, We The People agreed to make periodic payments, immediately or after a period of deferment, for the lifetime of the CGA purchaser and, sometimes, his or her designated beneficiary.² As detailed further herein, We The People through, among others, Richard and Susan Olive, made numerous false and misleading statements of material fact in the course of the CGA offering.

14. During the period We The People was issuing and exchanging securities, it claimed to operate as a non-profit organization. However, rather than operate as a charity, We The People operated for the primary purpose of issuing CGAs. We The People used the proceeds of the CGA offering to pay substantial sums to the Olives, third-party promoters, and consultants. The Olives also misappropriated some of the proceeds of the CGA offering for their

¹ Tennessee dismissed its charges after Richard Olive was indicted by the federal grand jury.

² Although called a “charitable gift annuity” by We The People, the products sold were different from CGAs issued legitimately for several reasons, including, but not limited to: (a) We The People marketed the product based on false representations regarding the financial benefits of its CGAs; (b) We The People utilized third-parties it referred to as “marketing advisors” who promoted We The People’s products in exchange for significant, undisclosed commissions; (c) We The People issued CGAs primarily to benefit the Olives and promoters, rather than charity; and (d) assets transferred to We The People in exchange for CGAs were its only source of funds.

own personal benefit. We The People directed only an insignificant amount of the money raised towards charitable services, contrary to its representations. For instance, We The People made public statements that it had donated \$21.8 million in relief aid, when in fact the supplies were donated by others and WTP merely made a small donation to cover the cost of a third-party to ship the supplies.

15. We The People's CGAs were promoted and marketed as investments. We The People claimed that its CGAs were worth the "full" accumulated value of the assets transferred by investors to We The People, and that purchasers would receive an income stream, penalty free cash withdrawals, and tax benefits.

16. Investors with We The People did not have any duties or management roles in the operation of the We The People CGA program. Investors were dependent upon the expertise and efforts of We The People for their returns. Also, We The People pooled investor funds in various bank accounts.

17. Investors often learned about We The People's investment product from promoters who signed marketing agreements with We The People. We The People would provide these promoters with materials, including flyers, letters, illustrations, and even videos, to use in soliciting the investments. We The People paid these promoters significant commissions, ranging from 7-10%.

18. Investors also learned about We The People's product from its website, direct mail solicitations, or through in-person seminars conducted by We The People.

19. The Olives were directly involved in nearly all aspects of the We The People offering and received commissions based on the assets transferred to We The People pursuant to the CGA program. Richard Olive was head of We The People's marketing and promotional

efforts. He organized We The People's sales operations, drafted the marketing materials, solicited investors, and recruited third-parties to solicit investors to purchase the CGAs. Susan Olive served as We The People's chief administrative and financial officer, and also supported We The People's marketing and promotional efforts. Together, with one other individual, they formed the "executive management group" at We The People and were the highest-paid employees at We The People.

20. Richard and Susan Olive conducted seminars about the program for potential investors and, at those seminars, distributed promotional materials related to the program. Richard Olive featured on promotional videos distributed by We The People and also spoke directly with individuals over the phone to solicit investments with We The People.

21. By the end of 2009, investors had transferred almost \$10 million in assets to We The People in exchange for its CGAs. By the end of 2010, that number had risen to over \$25 million. And as of April 2012, when We The People ceased offering CGAs in response to the SEC's investigation of its conduct, We The People had received over \$75 million in assets from over 400 investors in over 30 states in exchange for the issuance of its investment products. A portion of the assets received in exchange for CGAs consisted of stocks and other securities.

III. Misrepresentations and Acts of Fraud and Deceit

22. As a part of the scheme, We The People made numerous false and misleading statements through, among others, the Olives about the CGAs and engaged in acts of fraud and deceit on prospective and existing investors.

23. With respect to the value of the CGAs, We The People falsely claimed in written materials and oral statements that in exchange for their existing asset, investors would receive a product worth the "full accumulated value" of the transferred asset, in addition to receiving fixed

payments based on a specified percentage of the accumulated value of the assets they transferred and other financial benefits.

24. In fact, those claims were misleading because potential investors were not told in advance of transferring their assets to We The People that the value of the CGA issued in exchange for the transferred assets – as calculated by We The People – was always substantially less than those assets’ “full” accumulated value because We The People took a significant percentage of the asset’s value and kept it as a purported “charitable gift.”

25. With respect to the safety and security of the investment, We The People falsely stated in promotional and marketing materials and call scripts containing information shared with potential investors that We The People maintained a reserve, equal to 110% of its liabilities, secured in a trust account with a financial services company and that We The People’s trust account could not be borrowed or loaned against. In fact, this claim was false. We The People does not have any restricted-access “trust accounts,” let alone maintain a “reserve” in them.

26. Further with respect to the safety and security of the investment, We The People falsely stated in promotional and marketing materials and call scripts containing information shared with potential investors that it “reinsured” its products through “highly rated” commercial insurance companies.

27. Representations that We The People obtained reinsurance for its investment products are false. We The People did not purchase reinsurance from an insurance company to cover its potential liabilities under the CGAs and there is no obligation running from any insurance company to the investor to cover any losses they may have in the event We The People defaults on its payment obligations.

28. Also, We The People failed to disclose to investors any information concerning the Olives' legal problems, including the fact that Richard Olive has been found to have engaged in securities fraud in connection with the sale of similar products at NFOA. We The People also failed to disclose any information concerning the Olives' criminal indictments, in February 2010 and March 2012, in connection with their conduct at NFOA.

29. We The People also failed to disclose to investors any information concerning the several million dollars in commissions paid in connection with the sale of its investment products. We The People typically paid commissions of 7% to its marketing advisers, and in some instances up to 10%. We The People also paid commissions to the Olives, ranging from .75% to 2.5% during their period of employment.

30. We The People's false statements were made by phone, e-mail, facsimile, and through United States mail.

IV. Offer and Sale of Unregistered Securities

31. Section 5 of the Securities Act prohibits any offers, directly or indirectly, to sell a security unless a registration statement for that security has been filed with the SEC. A registration statement is transaction specific. Each sale of a security must either be made pursuant to a registration statement or fall under a registration exemption.

32. The interests in the CGAs were investment contracts, which are securities under federal law.

33. At the time of the offers and sales of the interests in We The People's CGA program, there were no registration statements filed and in effect with respect to the program.

34. We The People offered and sold interests in the investment program to hundreds of investors in multiple states. Except for the purported returns and identification of items being exchanged, the terms of the investment contracts were substantially similar.

35. We The People did not provide current or prospective investors with material, accurate information about We The People's finances or about the value of the investment contracts that We The People sold. We The People also did not provide current or prospective investors with an audited balance sheet for We The People, or any other accurate, material financial disclosures.

36. We The People took no steps to ensure that the offering and sale of the CGAs were directed to only a small number of sophisticated investors and, in fact, took no steps to determine potential investors' net worth, or that investors had the knowledge, experience, or business acumen to qualify as sophisticated or accredited investors. Most of the investors were elderly, many were unsophisticated, and some invested a significant portion of their entire savings with We The People.

FIRST CLAIM FOR RELIEF
Fraud - Violations of Securities Act Section 17(a)
[15 U.S.C. § 77q(a)]

37. The SEC incorporates the allegations of paragraphs 1 through 36 as if fully set forth herein.

38. We The People, directly or indirectly, with scienter, in the offer or sale of securities, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, employed a device, scheme, or artifice to defraud, in violation of Section 17(a)(1) of the Securities Act.

39. We The People, directly or indirectly, in the offer or sale of securities, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, obtained money or property by means of untrue statements of material fact or by omissions to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading, in violation of Section 17(a)(2) of the Securities Act.

40. We The People, directly or indirectly, in the offer or sale of securities, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, engaged in transactions, practices, or courses of business which have been or are operating as a fraud or deceit upon the purchasers of securities, in violation of Section 17(a)(3) of the Securities Act.

41. We The People has violated, and unless restrained and enjoined will in the future violate Securities Act Section 17(a) [15 U.S.C. § 77q(a)].

SECOND CLAIM FOR RELIEF
Fraud – Violations of Exchange Act Section 10(b) and Rule 10b-5 Thereunder
[15 U.S.C. §§ 78j(b) and 17 C.F.R. § 240.10b-5]

42. The SEC incorporates the allegations of paragraphs 1 through 41 as if fully set forth herein.

43. We The People, acting with scienter, by use of means or instrumentalities of interstate commerce or of the mails, or of any facility of a national securities exchange, used or employed, in connection with the purchase or sale of a security, a manipulative or deceptive device or contrivance in contravention of the rules and regulations of the SEC; employed devices, schemes or artifices to defraud; made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances

under which they were made, not misleading; or engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon any person, in violation Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

44. We The People has violated, and unless restrained and enjoined will in the future violate Exchange Act Sections 10(b) and Rule 10b-5 [15 U.S.C. §§ 78j(b) and 17 C.F.R. § 240.10b-5].

THIRD CLAIM FOR RELIEF
Sale of Unregistered Securities: Violations of Sections 5(a) and 5(c) of the Securities Act
[15 U.S.C. §§ 77e(a) and 77e(c)]

45. The SEC incorporates the allegations of paragraphs 1 through 44 as if fully set forth herein.

46. We The People, directly or indirectly, made use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer and sell securities through the use or medium of a prospectus or otherwise, and carried or caused to be carried through the mails, or in interstate commerce, by means or instruments of transportation, such securities for the purpose of sale or for delivery after sale, when no registration statement had been filed or was in effect as to such securities.

47. We The People has violated, and unless restrained and enjoined, will continue to violate Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

PRAYER FOR RELIEF

WHEREFORE, the SEC respectfully requests that the Court:

1. Enter an Order finding that We The People committed the violations alleged in the First Through Third Claims for Relief in this Complaint, and unless restrained will continue to do so;

2. Enter Injunctions, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, temporarily, preliminarily, and permanently restraining and enjoining We The People, and their officers, agents, servants, employees, attorneys, fictitious trade name entities, and those persons in active concert or participation with them who receive actual notice by personal service or otherwise, from violating or any of the violations alleged;

3. Order that We The People disgorge all illegal gains, together with prejudgment and post judgment interest;

4. Order that We The People, and any entities that they control, each prepare a sworn accounting of their receipt, disbursement and/or use of any funds received directly or indirectly from any investor and include a schedule of each of their assets and liabilities and a schedule of the assets and liabilities of any entities that they control;

5. Enter an Order appointing a receiver for the purposes of marshaling and preserving all assets of the Defendant; and

6. Order such other relief as this Court may deem just or appropriate.

Dated: February 4, 2013

Respectfully submitted,

/s/ Nicholas Heinke
Nicholas Heinke (Special Bar No. A5501845)
Dugan Bliss
U.S. Securities and Exchange Commission
1801 California Street, Suite 1500
Denver, CO 80202
Telephone: (303) 844-1000
Facsimile: (303) 844-1068
Attorneys for Plaintiff

Of Counsel:

Ian Karpel

Michael Cates

Stephen C. McKenna

U.S. Securities and Exchange Commission

1801 California Street, Suite 1500

Denver, CO 80202

Telephone: (303) 844-1000

Facsimile: (303) 844-1068