UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STOP THIS INSANTITY INC. EMPLOYEE LEADERSHIP FUND, *et al.*, Plaintiffs, v. FEDERAL ELECTION COMMISSION, Defendant.	)	Civ. No. 12-1140 (BAH) MOTION TO DISMISS

DEFENDANT FEDERAL ELECTION COMMISSION'S MOTION TO DISMISS

Defendant Federal Election Commission respectfully moves the Court to dismiss this case for failure to state a claim on which relief can be granted. Fed. R. Civ. P. 12(b)(6). As grounds for this motion, the Commission refers to (and incorporates by reference herein) its Opposition to Plaintiffs' Motion for Preliminary Injunction (Docket No. 6) ("FEC Inj. Br.").

Stop This Insanity, Inc. ("STI") is a non-profit corporation that has a separate segregated fund — Stop This Insanity, Inc. Employee Leadership Fund ("STIELF") — which is registered with the Federal Election Commission as a political committee (commonly called a "PAC"). At the present time, STIELF has a single bank account into which it receives contributions that are subject to the limitations, prohibitions, and reporting requirements of the Federal Election Campaign Act ("FECA"), 2 U.S.C. §§ 431-57. STIELF uses this account to make direct contributions to candidates. Under FECA and Commission regulations, STIELF is prohibited from opening a second federal account, a "non-contribution account," into which it would solicit unlimited individual and corporate contributions, and from which it would finance independent expenditures. Through this lawsuit, STIELF seeks to open such an account. But STI itself can

already, consistent with existing law, solicit and spend such funds — either directly or through the creation of a separate PAC.

As demonstrated in the Commission's prior brief, the First Amendment does not require that a corporation such as STI be permitted to finance electoral advocacy through an accounting mechanism. The accounting device that STI seeks to create would serve to conceal the corporation's political spending from the public and facilitate attempts to pressure the corporation's employees and others into funding its candidate advocacy.

Plaintiffs' claims fail as a matter of law because:

1. In *Citizens United v. FEC*, 130 S. Ct. 876 (2010), the Supreme Court struck down FECA's prohibition on direct corporate financing of campaign advocacy as a violation of the First Amendment. But the Court upheld FECA's requirement that corporation-funded electioneering must be *disclosed* to the Commission and the public. Eight Justices agreed that disclosure is "less restrictive" than a limit on spending, *id*. at 915, and is a constitutionally permissible method of furthering the public's important interest in knowing who is responsible for pre-election communications about candidates, *see id*. at 915-16. (*See* FEC Inj. Br. at 4-5, 17-18.)

2. After *Citizens United*, the D.C. Circuit held in *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (en banc), that a statutory limit on contributions to PACs was unconstitutional as applied to a non-connected PAC that spent its funds only on independent advocacy and was funded only by individual contributions. *Id.* at 693-95.[1] But like the Supreme Court in *Citizens United*, the D.C. Circuit affirmed the

[1] A "non-connected PAC" is a political committee that is neither a committee of a political party nor a "separate segregated fund" established by a corporation or labor organization — *i.e.*,

constitutionality of mandatory disclosure of political spending "based on a governmental interest in 'provid[ing] the electorate with information'" about the sources of election-related funds. *Id.* at 696 (quoting *Buckley v. Valeo*, 424 U.S. 1, 66 (1976)). The D.C. Circuit held that the government can constitutionally require all political committees — including those exempt from limits on the contributions they receive — to report *all* of their income and spending, "no matter whether the [funds] were [given] towards administrative expenses or independent expenditures." *Id.* at 698. (*See* FEC Inj. Br. at 5-6, 18.)

3. The relief that plaintiffs seek in this lawsuit would permit STI to solicit funds from the general public to finance express candidate advocacy without disclosing that STI was paying for the solicitations. *See* 2 U.S.C. §§ 431(8)(B)(vi), (9)(B)(v), 434(b), 441b(b)(2)(C). But *Citizens United* and *SpeechNow* undermine plaintiffs' claim of a constitutional right to conduct such solicitations — which may themselves support or oppose federal candidates — without disclosing STI's role in financing and distributing them. Plaintiffs fail to demonstrate a constitutional right to finance such communications in a manner that would render them exempt from the disclosure rules applicable to every other PAC engaging in similar electioneering. (*See* FEC Inj. Br. at 15-19.)

4. To prevent coercion of corporate employees and others, federal law provides that a corporation-sponsored PAC — or separate segregated fund ("SSF") — generally may solicit contributions only from the connected corporation's owners and salaried executives (and their respective families). 2 U.S.C. § 441b(b)(4)(A)(i);

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it is not "connected" to any political party, corporation, or union. *See* 2 U.S.C. §§ 431(4)(B), 441b(b).

11 C.F.R. § 114.5(g)(1). A limited exception permits an SSF to solicit its connected corporation's non-executive employees, but there are detailed restrictions on such solicitations that limit the coercive effect of a corporation asking its employees to give money. 2 U.S.C. § 441b(b)(3)(B)-(C), (4)(B). (*See* FEC Inj. Br. at 22-25.)

5. Plaintiffs fail to demonstrate a constitutional right to make unrestricted solicitations to STI's employees and the public for STI's SSF. Even accepting plaintiffs' recent pledge to abide by the requirements of 2 U.S.C. § 441b(b)(4)(B), plaintiffs' proposed conduct would still enable corporations to double the number of solicitations they make to employees and, more importantly, to solicit unlimited funds from each employee. This result — permitting a corporation to ask its employees to give all they can afford to the employer's SSF — would facilitate rather than preclude the very coercive conditions Congress sought to prevent when it enacted the restrictions plaintiffs now seek to avoid. (*See* FEC Inj. Br. at 22-25.)

CONCLUSION

For all of the foregoing reasons, and those set forth in the Commission's Opposition to Plaintiffs' Motion for Preliminary Injunction (Docket No. 6), the Commission requests that the case be dismissed with prejudice under Federal Rule of Civil Procedure 12(b)(6).

Respectfully submitted,

Anthony Herman (D.C. Bar No. 424643)
General Counsel

David Kolker (D.C. Bar No. 394558)
Associate General Counsel

Lisa J. Stevenson (D.C. Bar No. 457628)
Special Counsel to the General Counsel

/s/ Adav Noti
Adav Noti (D.C. Bar No. 490714)
Acting Assistant General Counsel
anoti@fec.gov

Erin Chlopak (D.C. Bar No. 496370)
Attorney

FEDERAL ELECTION COMMISSION
999 E Street NW
Washington, DC 20463
(202) 694-1650

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