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January 4, 2012  
OFFICE OF GENERAL  
COUNSEL

Anthony Herman, Esq.  
General Counsel  
Federal Election Commission  
999 E Street NW  
Washington, DC 20013

**RE: Stop This Insanity, Inc. Employee Leadership Fund (ELF) Advisory Opinion Request**

Dear Mr. Herman,

Pursuant to 2 U.S.C. § 437f, Stop This Insanity Inc. Employee Leadership Fund (ELF), a Connected Committee, requests an Advisory Opinion from the Federal Election Commission as to whether it may open a non-contribution account (hereinafter a “Carey Account”) to accept contributions from individuals, corporations, and unions that is not subject to the limitations and prohibitions of 2 U.S.C. §441a(a)(1)(C) or §441b (hereinafter, “Carey Contributions”) to conduct Independent Expenditures and proportionally pays an appropriately tailored share of administrative expenses.

**I. INTRODUCTION**

Subsequent to *Citizens United v. FEC*, 130 S. Ct. 786 (2010), *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C.Cir. 2010), and *Carey v FEC*, 791 F. Supp. 2d 121 (D.D.C. 2011), Stop This Insanity, Inc. (hereinafter “STI”) and its employees who would be within the restricted class 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 employees the speech and associational right to do so through a Carey Account within ELF and in conjunction with the general public, corporations, and unions. 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



the Commissions recent guidance on *Carey* Accounts and *Carey* Contributions in its October 5, 2011 "FEC Statement on *Carey v FEC*".<sup>1</sup>

## **II. BACKGROUND**

Stop This Insanity, Inc. is a not-for-profit social welfare organization exempt from taxation under §501(c)(4) of the Internal Revenue Code. STI has chosen not to engage in Independent Expenditures itself, and may not make contributions to Candidates pursuant to 2 U.S.C. §441b(a). However, STI has now filed (attached) to establish, pursuant to 2 U.S.C. §441b(b)(4)(a)(i), a Connected PAC to allow its employees to engage in collective political contributions and activities through its Employee Leadership Fund (ELF). ELF is a Connected PAC, and its restricted class includes the executive and administrative employees of STI and their spouses. ELF, as distinct from STI, wishes to open a second bank account in its name to operate as a *Carey* Account into which it may solicit and receive *Carey* Contributions, including from STI and other individual, corporate, and union contributors, all of which contributions would be disclosed.

## **III. DISCUSSION**

Corporations, Unions, 501(c)4 organizations, the restricted class of all of these, and the general public may all individually spend unlimited sums for Independent Expenditures on their own. As the Supreme Court clearly and unequivocally stated, "[W]e now conclude that independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption." *Citizens United*, 130 S. Ct. 876, 909 (2010) at 909. As a matter of law, Independent Expenditures do not create apparent, or actual, quid pro quo corruption.

As a consequence, regulations burdening Independent Expenditure speech are outside the scope of the government's legitimate interest in preventing corruption, *SpeechNow.org v FEC*, 599 F.3d 686, 692 and are therefore independently subject to strict scrutiny. The *SpeechNow.org* court further clarified that what each of these parties may do themselves they may also do in free association with one another, through the vehicle of a Political Action Committee.

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<sup>1</sup> Reporting Guidance for Political Committees that Maintain a Non-Contribution Account, <http://www.fec.gov/press/Press2011/20111006postcarey.shtml>



In *Carey v FEC*, the Court's Preliminary Injunction held that Political Action Committees are constitutionally entitled to engage in, both, soliciting and accepting amount and source restricted contributions for use in direct candidate support, and soliciting and accepting *Carey* Contributions to a *Carey* Account.

In sum, corporations, unions, 501(c)4 organizations, the restricted class of all of these, and the general public may all individually make *Carey* Contributions to the *Carey* Accounts of non-connected PACs for the purpose of conducting Independent Expenditures, and paying related administrative and operating expenses. Connected PACs may also make unlimited Independent Expenditures, or make *Carey* Contributions to the *Carey* Accounts of non-connected PACs.

The distinction between Connected and Non-Connected PACs is the trade-off between the subsidized administrative and operating costs at 2 U.S.C. §441b(b)(2)(C) and the corresponding restriction on fundraising at 2 U.S.C. §441b(b)(4)(A)(i). Connected PACs benefit from the unlimited support of their administrative and operating expenses by the connected organization, the costs of which generally need not be disclosed. Conversely, Connected PACs are restricted to only raising funds from the restricted class of their connected organization. The principle behind this restriction is to prevent the subsidization of contributions made to candidates by the general public from what would, independently, be an unlawful corporate source. This is a fundamental maxim of the law – one may not lawfully do through another what one is prohibited from doing oneself. Because a corporation may not contribute its own treasury funds to a candidate directly, it may not do so through individuals, and the statutory dispensation for Connected PACs does not alter this premise.

Here, however, is a connected organization that may lawfully make unlimited Independent Expenditures itself (that it chooses not to is immaterial), and it may lawfully make *Carey* Contributions to the *Carey* Accounts of others as well. Similarly, any and all members of the restricted class of the organization may do so as well. There is no added nexus of corruption that arises from these parties engaging in this activity through a vehicle of their choosing – the *Carey* Account of their Connected PAC. On the contrary, doing so would likely further the government's interest in disclosure of Independent Expenditure activity. Conversely, there is no rational basis nor legitimate governmental interest in prohibiting the restricted class of the organization, through their PAC, from engaging in this activity, nor is it Constitutional to do so post- *Citizens United*, *SpeechNow.org*, and *Carey*.



There is no compelling government interest in discriminating between the Independent Expenditure activities of non-connected PACs and the Independent Expenditure activity of Connected PACs and their restricted class and others in the general public who may lawfully engage in such activity themselves – to do so would in effect discriminate against speakers based on how they choose to associate.

### **III. QUESTIONS PRESENTED**

1. 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)?
2. 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?

### **IV. CONCLUSION**

Following *Citizens United*, *EMILY's List*, *SpeechNow.org*, and *Carey*, and as now recognized by the Commission, Independent Expenditures do not themselves give rise to actual or apparent *quid pro quo* corruption. Connected PACs should be entitled as a matter of right to open *Carey Accounts* and accept *Carey Contributions* for their Independent Expenditure activity, provided that the portion of administrative and operational costs related to activity within that *Carey Account* is kept separate from funds used to administer contributions to candidates, and is properly reported.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dan Backer', with a long horizontal flourish extending to the right.

Dan Backer, Esq.

Counsel

Stop This Insanity, Inc.

FEC FORM 1

STATEMENT OF ORGANIZATION

Office Use Only

1. NAME OF COMMITTEE (in full)

(Check if name is changed)

Example: If typing, type over the lines.

12FE4M5

Stop This Insanity, Inc. Employee Leadership Fund

ADDRESS (number and street)

PO BOX 75021

(Check if address is changed)

Washington

DC

20013

CITY

STATE

ZIP CODE

COMMITTEE'S E-MAIL ADDRESS (Please provide only one e-mail address)

dbacker@DBCapitolStrategies.com

(Check if address is changed)

COMMITTEE'S WEB PAGE ADDRESS (URL)

(Check if address is changed)

2. DATE

01 / 04 / 2012

3. FEC IDENTIFICATION NUMBER

C

4. IS THIS STATEMENT

NEW (N)

OR

AMENDED (A)

I certify that I have examined this Statement and to the best of my knowledge and belief it is true, correct and complete.

Type or Print Name of Treasurer Mr. Dan Backer Esq.

Signature of Treasurer

Mr. Dan Backer Esq.

Date

01 / 04 / 2012

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Statement to the penalties of 2 U.S.C. §437g.

ANY CHANGE IN INFORMATION SHOULD BE REPORTED WITHIN 10 DAYS.

Office Use Only

For further information contact: Federal Election Commission Toll Free 800-424-9530 Local 202-694-1100

FEC FORM 1 (Revised 02/2009)

5. TYPE OF COMMITTEE

**Candidate Committee:**

- (a)  This committee is a principal campaign committee. (Complete the candidate information below.)
- (b)  This committee is an authorized committee, and is NOT a principal campaign committee. (Complete the candidate information below.)

Name of Candidate \_\_\_\_\_

Candidate Party Affiliation  Office Sought:  House  Senate  President State  District

- (c)  This committee supports/opposes only one candidate, and is NOT an authorized committee.

Name of Candidate \_\_\_\_\_

**Party Committee:**

- (d)  This committee is a  (National, State or subordinate) committee of the  (Democratic, Republican, etc.) Party.

**Political Action Committee (PAC):**

- (e)  This committee is a separate segregated fund. (Identify connected organization on line 6.) Its connected organization is a:
  - Corporation  Corporation w/o Capital Stock  Labor Organization
  - Membership Organization  Trade Association  Cooperative
  - In addition, this committee is a Lobbyist/Registrant PAC.
- (f)  This committee supports/opposes more than one Federal candidate, and is NOT a separate segregated fund or party committee. (i.e., nonconnected committee)
  - In addition, this committee is a Lobbyist/Registrant PAC.
  - In addition, this committee is a Leadership PAC. (Identify sponsor on line 6.)

**Joint Fundraising Representative:**

- (g)  This committee collects contributions, pays fundraising expenses and disburses net proceeds for two or more political committees/organizations, at least one of which is an authorized committee of a federal candidate.
- (h)  This committee collects contributions, pays fundraising expenses and disburses net proceeds for two or more political committees/organizations, none of which is an authorized committee of a federal candidate.

**Committees Participating in Joint Fundraiser**

1.	_____	FEC ID number	<input type="checkbox"/> C _____
2.	_____	FEC ID number	<input type="checkbox"/> C _____
3.	_____	FEC ID number	<input type="checkbox"/> C _____
4.	_____	FEC ID number	<input type="checkbox"/> C _____

Write or Type Committee Name

# Stop This Insanity, Inc. Employee Leadership Fund

6. Name of Any Connected Organization, Affiliated Committee, Joint Fundraising Representative, or Leadership PAC Sponsor

Stop This Insanity, Inc.

Mailing Address 4856 E Baseline Road

Suite 103

Mesa

AZ

85206

CITY

STATE

ZIP CODE

Relationship:  Connected Organization  Affiliated Committee  Joint Fundraising Representative  Leadership PAC Sponsor

7. Custodian of Records: Identify by name, address (phone number -- optional) and position of the person in possession of committee books and records.

Full Name Mr. Dan Backer Esq.

Mailing Address PO BOX 75021

washington

DC

20013

Title or Position

CITY

STATE

ZIP CODE

Treasurer

Telephone number 202 - 210 - 5431

8. Treasurer: List the name and address (phone number -- optional) of the treasurer of the committee; and the name and address of any designated agent (e.g., assistant treasurer).

Full Name of Treasurer Mr. Dan Backer Esq.

Mailing Address PO BOX 75021

washington

DC

20013

Title or Position

CITY

STATE

ZIP CODE

Treasurer

Telephone number 202 - 210 - 5431

Full Name of Designated Agent

Mailing Address

Title or Position Telephone number

9. Banks or Other Depositories: List all banks or other depositories in which the committee deposits funds, holds accounts, rents safety deposit boxes or maintains funds.

Name of Bank, Depository, etc.

Bank of America

Mailing Address 1571 E. Elliot

Name of Bank, Depository, etc.

Mailing Address



**FEC MISCELLANEOUS TEXT RELATED TO A REPORT, SCHEDULE OR ITEMIZATION**

**Form/Schedule: F1N**

**Transaction ID :**

Consistent with the stipulated judgment in Carey v. FEC, this committee intends to establish a separate bank account to deposit and withdraw funds raised in unlimited amounts from individuals, corporations, labor organizations, and/or other political committees. The funds maintained in this separate account will not be used to make contributions, whether direct, in-kind, or via coordinated communications, or coordinated expenditures, to federal candidates or committees.

**Form/Schedule:**

**Transaction ID:**