IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CAMPAIGN LEGAL CENTER
1411 K Street, N.W., Suite 1400
Washington, D.C. 20005

DEMOCRACY 21
2000 Massachusetts Avenue, N.W.
Washington, D.C. 20036

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION
999 E Street N.W.
Washington, D.C. 20436

Defendant.

Civil Action No: _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Plaintiffs Campaign Legal Center ("CLC") and Democracy 21 ("D21") bring this action for declaratory and injunctive relief against the Federal Election Commission ("FEC" or "Commission") pursuant to 52 U.S.C. § 30109(a)(8), challenging as arbitrary and capricious, and contrary to law, the dismissal of five administrative complaints filed by plaintiffs against entities and individuals (collectively, "Respondents")[1] for making "straw donor" contributions in

[1] *See* Certification in MURs 6487 and 6488 (F8 LLC, et al.) (dated Feb. 23, 2016); Certification in MUR 6485 (W Spann LLC, et al.) (dated Feb. 23, 2016); Certification in MUR 6711 (Specialty Investment Group, Inc., et al.) (dated Feb. 23, 2016); Certification in MUR 6930 (Prakazrel "Pras" Michel, et al.) (dated Feb. 23, 2016).

violation of various disclosure provisions of the Federal Election Campaign Act ("FECA"), 52 U.S.C. § 30101 et seq., and Commission regulations.[2]

2. The plaintiffs' administrative complaints, designated by the FEC as Matters Under Review ("MURs") 6485 (W Spann), 6487 and 6488 (F8/Eli Publishing), 6711 (Specialty Investments Group) and 6930 (Pras Michel), alleged that named and unnamed individuals made political contributions to independent expenditure-only political committees (commonly referred to as "super PACs"), using named Limited Liability Companies ("LLCs") and other corporate entities as straw donors to hide their identities as the true sources of the contributions in disclosure reports filed with the FEC. These contributions ranged from $875,000 to over $12 million. In so doing, the individuals violated 52 U.S.C. § 30122 by making a contribution "in the name of another" and the LLC/conduits violated 52 U.S.C. § 30122 by allowing their names to be used to make such a contribution. Plaintiffs' administrative complaints further alleged that four of the five LLCs violated 52 U.S.C. §§ 30102, 30103 and 30104 by failing to register and file reports as political committees, as defined at 52 U.S.C. § 30101(4).

3. The FEC's six Commissioners voted on February 23, 2016 on motions to find "reason to believe" a violation of FECA had occurred with respect to the allegations in plaintiffs' administrative complaints, and failed in each case to obtain the four or more affirmative votes needed to find "reason to believe" and proceed with an investigation into the alleged violations. *See* 52 U.S.C. § 30109(a). Accordingly, the Commission dismissed all five complaints.

4. The Commission's failure to find "reason to believe" and its subsequent dismissal of plaintiffs' administrative complaints rested on impermissible interpretations of FECA, as set

[2] At the time four of the five complaints were filed, FECA was codified at Title 2 of the United States Code. Subsequently, FECA was moved to Title 52 and renumbered. All citations in this complaint are to the current Title 52.

forth in the Statement of Reasons of Commissioners Petersen, Hunter, and Goodman ("Petersen, Hunter, and Goodman SOR"), which were arbitrary, capricious, an abuse of discretion and otherwise contrary to law. *See Orloski v. FEC*, 795 F.2d 156, 161 (1986).

5. The Supreme Court has repeatedly recognized that disclosure laws play a vital role in our democracy by providing the electorate with critical information about who is funding political advertising during elections, so that voters can evaluate different speakers and messages, make informed voting choices and hold elected officials accountable. Key to that disclosure is the prohibition on the use of a straw donor to hide the true source of a contribution. Effective enforcement of FECA disclosure requirements is essential to ensure that the public can trust it is receiving accurate information.

6. The dismissal of plaintiffs' complaints has undermined FECA's purposes, including its goal of promoting transparency in elections and providing the electorate with information about who is speaking to influence elections. Plaintiffs have suffered as a result, because they, as well as the public, were deprived of timely information about the sources, of the contributions made to the super PACs—information to which they are legally entitled under FECA and which they use for their particular organizational work and advocacy.

7. Accordingly, plaintiffs seek a judicial declaration that the dismissal of their administrative complaints was arbitrary, capricious, an abuse of discretion, and otherwise contrary to law. Plaintiffs further seek an order requiring the FEC to conform with such a declaration within 30 days.

JURISDICTION AND VENUE

8. This Court has jurisdiction under 52 U.S.C. § 30109(a)(8)(A) and 28 U.S.C. § 1331.

9. Venue in this district is proper pursuant to 52 U.S.C. § 30109(a)(8)(A) and 28 U.S.C. § 1391(e).

PARTIES

10. Plaintiff CLC is a nonpartisan, nonprofit organization that works to strengthen our democracy through local, state and federal efforts to ensure that the public has access to information about the financing of our election campaigns, and to implement and defend campaign finance laws targeting real and apparent corruption. As part of these efforts, CLC is involved in litigation throughout the nation regarding contribution limits, disclosure, political advertising, enforcement issues and other campaign finance matters. It also participates in rulemaking and advisory opinion proceedings at the FEC to ensure that the agency is properly interpreting and enforcing federal election laws and files complaints with the FEC requesting that enforcement actions be taken against individuals or organizations that violate the law.

11. A central part of CLC's work involves research regarding the sources of money to influence our election. Disclosure reports filed with the FEC are an important source of information, and CLC uses this information as the basis for its fact-based legal analysis and advice regarding existing and proposed campaign finance laws.

12. This legal analysis is also used in campaign finance litigation in which CLC participates, frequently as amicus curiae, throughout the nation. For example, CLC recently filed amicus briefs in *Wagner v. FEC*, 793 F.3d 1 (D.C. Cir. 2015) (en banc), *cert. denied sub nom. Miller v. FEC*, 136 S. Ct. 895 (2016), and *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (en banc), *cert. denied sub. nom. Keating v. FEC*, 131 S. Ct. 553 (2010). Since representing the principal drafters of the Bipartisan Campaign Reform Act as intervenor-defendants in *McConnell v. FEC*, 540 U.S. 93 (2003), CLC has filed amicus briefs in every campaign finance case decided

by the Supreme Court, including *McCutcheon v. FEC*, 134 S. Ct. 1434 (2014), and *Citizens United v. FEC*, 558 U.S. 310 (2010).

13. In addition, CLC uses information obtained from campaign finance disclosure reports in preparing testimony before Congress and state and local legislatures and agencies,[3] publications,[4] op-eds, blog posts, and other commentary through appearances on broadcast media and in interviews for print and web publications.[5] These communications are directed towards educating policy makers and the public about who is spending money to influence elections through contributions to super PACs, candidates, political committees and party committees, as well as direct expenditures for independent expenditures and electioneering communications.

14. Plaintiff D21 is a nonprofit, nonpartisan organization dedicated to making democracy work for all Americans through support of campaign finance and other political reforms. To accomplish these goals, it conducts public education efforts, participates in litigation involving the constitutionality and interpretation of campaign finance laws, and engages in efforts to help ensure that campaign finance laws are properly enforced and implemented. It also participates in rulemakings and advisory opinion proceedings, and other administrative matters, at the FEC.

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[3] *See, e.g., Revisiting IRS Targeting: Progress of Agency Reforms and Congressional Options: Hearing Before the Subcomm. on Oversight, Agency Action, Federal Rights and Federal Courts of the S. Comm. on the Judiciary*, 114th Cong. (2015) (testimony of Lawrence M. Noble, General Counsel, Campaign Legal Center); Testimony of Campaign Legal Center submitted to the Michigan House Elections Standing Committee on S.B. 638 (Feb. 3, 2016), http://www.campaignlegalcenter.org/document/state-michigan-testimony-clc-house-elections-standing-committee-sb-638.

[4] *See, e.g.*, Lawrence M. Noble, Blueprints for Democracy: Actionable Reforms to Solve Our Governing Crisis, http://www.campaignlegalcenter.org/sites/default/files/IO_BlueprintsForDemocracy_FINAL.PDF.

[5] For examples of CLC's work, see http://www.campaignlegalcenter.org.

15. D21 regularly publishes a Political Money Report, which is distributed to the media and concerned individuals and groups. D21's Political Money Report makes extensive use of campaign finance information filed with the FEC under federal campaign finance disclosure requirements to produce analyses reported on by news organizations and nonprofits groups. D21 also makes use of FEC campaign finance data in the op-ed articles it publishes and distributes to the media and the public. The organization also engages in various efforts to strengthen federal campaign finance disclosure requirements to ensure that accurate and complete campaign finance information is provided for the public and the media.

16. Plaintiffs rely on accurate federal campaign disclosure information to carry out activities central to their mission, including research, analysis and reporting about the true sources of contributions to super PACs and other political committees. The use of straw donors to make contributions "in the name of another" deprives the plaintiff organizations, as well as the public, of information about the source of contributions to super PACs and other political committees, and prevents them from carrying out a central part of their mission.

17. Defendant FEC is an independent federal agency charged with the administration and civil enforcement of FECA. 52 U.S.C. § 30106.

FACTS

STATUTORY AND REGULATORY FRAMEWORK

Prohibition on Contributions in the Name of Another

18. FECA provides that "[n]o person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person." 52 U.S.C. § 30122. In turn, "person" is defined as including "an individual, partnership, committee,

association, corporation, labor organization, or any other organization or group of persons . . . ." 52 U.S.C § 30101(11).

19. The Commission regulation implementing the statutory prohibition on "contributions in the name of another" provides the following examples of "contributions in the name of another":

a. "Giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made." 11 C.F.R. § 110.4(b)(2)(i).

b. "Making a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source." 11 C.F.R. § 110.4(b)(2)(ii).

Contributions by Limited Liability Companies

20. Commission regulations provide that limited liability companies are treated as individuals, partnerships or corporations for FECA purposes, consistent with the tax treatment they elect under the Internal Revenue Code. 11 C.F.R. § 110.1(g).

21. A contribution by an LLC that elects to be treated as a partnership by the Internal Revenue Service ("IRS") (or fails to elect treatment as either a partnership or a corporation) is considered a contribution from a partnership and attributed to each partner. 11 C.F.R. § 110.1(e) and (g)(2).

22. An LLC that elects to be treated as a corporation by the IRS is considered a corporation for the purposes of FECA. 11 C.F.R. § 110.1(g)(3).

23. A contribution by an LLC with a single natural person member that does not elect to be treated as a corporation by IRS is attributed only to that single member. 11 C.F.R.

§ 110.1(g)(4); *see also* FEC Advisory Opinion 2009-02 (True Patriot Network) (treating expenditures by a single-member LLC, like contributions, as attributable solely to the LLC's single member).

24. An LLC that is treated as a partnership, or that has a single natural person member and does not elect treatment as a corporation, that makes a contribution shall, at the time it makes the contribution, "provide information to the recipient committee as to how the contribution is to be attributed, and affirm to the recipient committee that it is eligible to make the contribution." 11 C.F.R. § 110.1(g)(5).

Political Committee Status, Registration, and Reporting Requirements

25. FECA defines the term "political committee" to mean "any committee, club, association, or other group of persons which receives contributions aggregating in excess of $1,000 during a calendar year or which makes expenditures aggregating in excess of $1,000 during a calendar year." 52 U.S.C. § 30101(4)(A); *see also* 11 C.F.R. § 100.5(a). "Contribution," in turn, is defined as "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 52 U.S.C. § 30101(8)(A)(i). Similarly, "expenditure" is defined as "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office." 52 U.S.C. § 30101(9)(A)(i).

26. In *Buckley v. Valeo*, 424 U.S. 1 (1976), the Supreme Court construed the term "political committee" to "only encompass organizations that are under the control of a candidate *or the major purpose of which is the nomination or election of a candidate*." *Id*. at 79 (emphasis added). Thus, there is a two-prong test for "political committee" status under federal law: (1) whether an entity or other group of persons has a "major purpose" of influencing the "nomination or election of a candidate," as stated by *Buckley*, and if so, (2) whether the entity or

other group of persons receives "contributions" or makes "expenditures" in excess of $1,000 in a calendar year.

27. Any entity that meets the definition of a "political committee" must file a "statement of organization" with the FEC, 52 U.S.C. § 30103, comply with the organizational and recordkeeping requirements of 52 U.S.C. § 30102, and file periodic disclosure reports of its receipts and disbursements, 52 U.S.C. § 30104.

28. The political committee disclosure reports required by FECA must disclose to the Commission and the public, including complainants, comprehensive information regarding such committee's financial activities, including the identity of any donor who has contributed $200 or more to the committee within the calendar year. *See* 52 U.S.C. § 30104(b).

Commission Enforcement Actions

29. FECA requires the FEC to find "reason to believe" a violation has occurred by four affirmative votes of the members of the Commission prior to initiating an investigation in response to a complaint. 52 U.S.C. § 30109(a). Commission regulations specify, in relevant part, that a complaint must identify the complainants and be sworn and signed, and that the allegations in a complaint "not based upon personal knowledge" should identify the source of the information that "gives rise to the complainant's belief in the truth of such." 11 C.F.R. § 111.4(b), (d).

ADMINISTRATIVE PROCEEDINGS

MUR 6485 (W Spann)

30. Plaintiffs filed a sworn administrative complaint on August 5, 2011 alleging that W Spann LLC ("W Spann") was used as a conduit to hide the true source of a $1 million contribution to Restore Our Future, the super PAC that supported Mitt Romney's 2012

presidential run. The complaint asked the FEC to find "reason to believe" a violation had occurred and authorize an investigation into whether (a) the true source of the contribution had violated 52 U.S.C. § 30122 by making a contribution "in the name of another"; (b) W Spann had violated 52 U.S.C. § 30122 by allowing its name to be used to make such a contribution; and (c) W Spann violated 52 U.S.C. §§ 30102, 30103 and 30104 by failing to register and file reports as a political committee, as defined at 52 U.S.C. § 30101(4).

31. In materials produced in response to the complaint, Edward Conard, a friend and former business partner of then-presidential candidate Mitt Romney, admitted that he wanted to make a $1 million contribution to Restore Our Future. *See* Response from Conard and W Spann, MUR 6485 (dated Oct. 3, 2011). Conard claimed that he was concerned that disclosure of the contribution could jeopardize the security of his family and sought legal advice about how to make the contribution without disclosing his identity. He further claims he was told that he could set up an LLC, though "the FEC might seek to look through the contributing entity to the underlying contributor." *Id.* at 2.

32. Conard formed W Spann LLC "for the sole purpose of making a donation to Restore Our Future" in March 2011 and authorized W Spann to make the $1 million contribution in April 2011. W Spann was then dissolved in May 2011. Only after the contribution attracted media attention in August 2011, four months after the contribution was made, did Conard acknowledge having authorized the $1 million contribution. In his response to the complaint, Conard admitted that W Spann was "a vehicle for one man's one-time political donation." *Id.*

33. Based on the complaint and the responses, the FEC's Office of General Counsel ("OGC") recommended the Commission find "reason to believe" that Conard and W Spann LLC

violated 52 U.S.C. § 30122 and no "reason to believe" W Spann LLC violated 52 U.S.C. §§ 30102, 30103 and 30104. First General Counsel's Report at 19, MUR 6485 (Aug. 28, 2012).

34. Despite Conard's admission that W Spann was "a vehicle for one man's one-time political donation" of $1 million, three Commissioners would not vote to find "reason to believe" a violation had occurred. By letter dated March 2, 2015, plaintiffs were notified that the FEC was equally divided on whether to find "reason to believe" that Edward Conard and W Spann LLC violated 52 U.S.C. § 30122; no "reason to believe" that W Spann LLC violated 52 U.S.C. §§ 30102, 30103 and 30104; and no "reason to believe" that Restore Our Future and Charles R. Spies in his official capacity as Treasurer violated 52 U.S.C. § 30122, and accordingly closed the file, dismissing plaintiffs' administrative complaint.

MURs 6487 and 6488 (F8/Eli Publishing)

35. Plaintiffs filed a sworn administrative complaint on August 11, 2011 alleging that F8 LLC and Eli Publishing L.C. were used as conduits to hide the true source of two $1 million contributions to Restore Our Future on March 31, 2011. The complaints asked the FEC to find "reason to believe" that the true source of the contributions violated 52 U.S.C. § 30122 by making a contribution "in the name of another," and that F8 LLC and Eli Publishing L.C. violated 52 U.S.C. § 30122 by allowing their names to be used to make such a contribution. Further, plaintiffs' complaints alleged that F8 and Eli Publishing L.C. violated 52 U.S.C. §§ 30102, 30103 and 30104 by failing to register and file reports as political committees, as defined at 52 U.S.C. § 30101(4).

36. According to the First General Counsel's Report, Steven J. Lund was the source of the two $1 million contributions, which he made through F8 and Eli Publishing, two dormant LLCs owned by Lund, his family members, and his business associates. *See* First General

Counsel's Report at 10–12, MURs 6487 and 6488 (F8 LLC, et al.) (June 6, 2012). Furthermore, Lund is reported to have told the news media both that "he's not trying to hide the donation," but made the contribution through a corporation because it had accounting advantages, and that "he did not want '*to be real public* about being a part of the campaign.'" *Id.* at 6.

37. Based on the complaint and the response from Lund, the OGC concluded that "there is ample 'reason to believe' that, in violation of the Act, Lund was the true source of the $1 million contribution made by Eli Publishing," and that "there is also 'reason to believe' that F8 was a conduit and not the true source of the $1 million contribution by F8 to [Restore Our Future]." *Id.* at 11.

38. Based on the complaint and the responses, the OGC recommended the Commission find "reason to believe" that F8 and Eli Publishing in Steven Lund violated 52 U.S.C. § 30122. The Office of General Counsel also recommended that the commission "take no action at this time" with respect to the allegations that respondents violated 52 U.S.C. §§ 30102, 30103 and 30104.

39. By letter dated March 2, 2015, the plaintiffs were notified that the FEC "was equally divided" on whether to find "reason to believe" that Eli Publishing L.C., Steven J. Lund, F8 LLC, and Unknown Respondents violated 52 U.S.C. § 30122; and whether to take no action with respect to allegations that Eli Publishing L.C. and F8 LLC violated 52 U.S.C. §§ 30102, 30103 and 30104, or as to Restore Our Future and Charles R. Spies in his official capacity as Treasurer. Accordingly, the FEC closed the file, dismissing plaintiffs' administrative complaint.

MUR 6711 (Specialty Investments Group, Inc., et al.)

40. Plaintiffs filed an administrative complaint on December 20, 2012 (amended April 24, 2013) alleging that Specialty Investments Group Inc. ("SIG"), Kingston Pike

Development LLC ("KPD"), William S. Rose, Jr., and any other persons who made contributions in the name of Specialty Group Inc. and Kingston Pike Development LLC, had violated 52 U.S.C. § 30122, and that SIG and KPD violated 52 U.S.C. §§ 30102, 30103 and 30104.

41. The OGC recommended that the Commission find "reason to believe" that Richard Stephenson, a director of the super PAC FreedomWorks for America ("FWFA"), made twenty contributions totaling over $12 million to FWFA using the names of SIG and KPD. The available information demonstrated that Stephenson pledged to make $10 to $12 million in contributions at an August 2012 FreedomWorks retreat, FreedomWorks executive Adam Brandon helped to arrange the contributions, and Stephenson dictated how the contributions would be spent. *See* First General Counsel's Report at 13–14, MUR 6711 (June 6, 2014).

42. OGC found that SIG and KPD were established with acknowledged "political purposes" and funded with "private capital" shortly before the 2012 election—days before their first contributions to FWFA—and dissolved less than a year later. *Id.* at 14, 16. Based on the complaint and responses, the OGC recommended finding "reason to believe that respondents violated [52 U.S.C. § 30122]" by making contributions in the name of another. *Id.* at 13.

43. By letter dated March 4, 2016, plaintiffs were advised that the FEC had "considered the allegations" contained in their complaint, but fell short of the four votes needed to find "reason to believe" that William S. Rose, Jr., SIG, KPD, FWFA, Richard J. Stephenson and Adam Brandon violated 52 U.S.C. § 30122, and accordingly closed the file and dismissed plaintiffs' administrative complaint.

MUR 6930 (Pras Michel)

44. Plaintiffs filed a sworn administrative complaint on April 13, 2015, alleging that there is "reason to believe" that Prakazrel "Pras" Michel, SPM Holdings LLC/SPM 2012 Holdings LLC, Black Men Vote, and the Treasurer of Black Men Vote, William Kirk Jr., violated 52 U.S.C. § 30122, which prohibits contributions "in the name of another."

45. The complaint cited FEC reports as showing that Black Men Vote, a political committee that intends to make only independent expenditures, reported receiving a total of $1.325 million in itemized individual contributions in the 2012 election cycle. These contributions were reported as coming from only three donors, SPM Holdings ($875,000 total—$400,000 on November 12, 2012 and $475,000 on November 24, 2012), Pras Michel ($350,000 total—$250,000 on September 7, 2012 and $100,000 on October 5. 2012) and Earl Stafford ($100,000 on October 4, 2012). Complaint ¶¶ 5–6, MUR 6930 (Pras Michel).

46. On March 31, 2015, the Center for Public Integrity published a report detailing the $875,000 in contributions that Black Men Vote reported having received from SPM Holdings LLC in 2012. *See* Michael Beckel, *Rapper-backed group illustrates blind spot in political transparency*, Center for Public Integrity, Mar. 31, 2015, http://www.publicintegrity.org/2015/03/31/16944/rapper-backed-group-illustrates-blind-spot-political-transparency.

47. According to the Center for Public Integrity report, between 2012 and the report's March 31, 2015 publication, the donor "behind SPM Holdings would remain . . . a mystery." *Id.*

48. The Center for Public Integrity reported that, while Florida state business registration records do not show any company named "SPM Holdings LLC," Florida real estate records do show a company named "SPM 2012 Holdings LLC" at the same Florida address that Black Men Vote listed for SPM Holdings LLC in its disclosure report filed with the

Commission. SPM 2012 Holdings LLC is "registered in Delaware, where records list only a registered agent: Dover, Delaware-based Registered Agent Solutions Inc., a for-profit company that boasts of being 'an innovative leader in the registered agent and transactional service industry.'" *Id.*

49. According to the Center for Public Integrity, Pras Michel "confirmed that SPM Holdings LLC—which is officially called SPM 2012 Holdings LLC—was his, adding that it was 'just a holding company to do my everyday business through.'" According to the plaintiffs' administrative complaint, this acknowledgment meant that Pras Michel provided $1.225 million in total to Black Men Vote—$350,000 in his own name and $875,000 in the name of SPM Holdings LLC. Complaint ¶ 10, MUR 6930.

50. By letter dated March 31, 2016, plaintiffs were notified that the Commission "was equally divided on whether to find 'reason to believe' the named respondents violated 52 U.S.C. § 30122," but had dismissed the allegations that the respondents violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 110.1(g) and issued a caution letter to Prakazrel "Pras" Michel and SPM Holdings LLC/SPM 2012 Holdings LLC with respect to the alleged regulatory violations. Accordingly, the Commission closed the file and dismissed plaintiffs' administrative complaint.

THE CONTROLLING COMMISSIONERS' STATEMENT OF REASONS

51. On April 1, 2016, the three Commissioners who refused to vote that there was "reason to believe" a violation had occurred in any of the five MURs—effectively blocking investigation and forcing the dismissal of plaintiffs' administrative complaints—issued their Statement of Reasons ("Petersen, Hunter, and Goodman SOR") explaining the reasons for their refusal to find "reason to believe."

52. This Statement of Reasons acknowledges that the use of LLC straw donors violates the prohibition on the making of a contribution in the name of another, but relies on

erroneous propositions of law as the rationale for the Commission's failure to take any action on clear violations of law. These erroneous propositions include:

a. Judicial decisions concerning unrelated FECA provisions—including *Citizens United*, 558 U.S. at 366 (invalidating ban on corporate independent expenditures), and *SpeechNow.org*, 599 F. 3d at 696 (allowing corporations to make contributions to political committees that only make independent expenditures)—made FECA's longstanding ban on making a contribution in the name of another, 52 U.S.C. § 30122, unclear as applied to LLCs;

b. Longstanding Commission precedent has treated funds deposited into a corporate account and then used for contributions as contributions from the corporation, and the Commission has previously rejected an attribution rule that would deem the individual owners of corporate LLCs as the makers of those LLCs' contribution; and

c. Even where the FEC is presented with allegations of someone making a contribution in the name of an LLC, it cannot find "reason to believe" a violation has occurred and begin an investigation unless it is presented with direct evidence that funds were "*intentionally* funneled" through the LLC "*for the purpose of*" evading FECA's reporting requirements, or presented with evidence indicating that the LLC did not have sufficient funds to make the contribution.

53. These propositions are incorrect. A contribution made by a single-member LLC that is not treated as a corporation by the IRS must be reported as coming from the individual. First, the regulations clearly provide that a contribution from such an LLC is to be considered coming from the individual member. 11 C.F.R. § 110.1(g)(4). Second, regardless of how the entity is treated, exercising direction or control over funds given to any entity for the purpose of making a contribution in that entity's name is a facial violation of 52 U.S.C.§ 30122. *Citizens*

United did not address these provisions or affect the prohibition on making a contribution in the name of another. On the contrary, the Supreme Court cited the existing laws requiring the disclosure of those funding independent expenditures as "a less restrictive alternative" to the ban on corporate independent expenditures. 558 U.S. at 369.

54. Further, although the Petersen, Hunter, and Goodman SOR erroneously states that Commission precedent has always treated funds deposited into a corporate account and then used for contributions as contributions from the corporation, the governing rule expressly describes when a contribution from a single-member LLC must be treated as coming from the individual owner. "A contribution by an LLC with a single natural person member that does not elect to be treated as a corporation by the [IRS] . . . shall be attributed only to that single member." 11 C.F.R. § 110.1(g)(4). Under this regulation, it is clear that a contribution from a single-member LLC is treated as coming from the owner.

55. Lastly, contrary to the Petersen, Hunter, and Goodman SOR, neither the Act nor Commission regulations require that a complainant be able to provide direct evidence of a violation before the Commission can find "reason to believe" a violation may have occurred and initiate an investigation. Such a policy would unreasonably limit the Commission's exercise of its investigatory powers to situations where it has already determined it has been provided with sufficient evidence to find a violation of the law. There was no justification for dismissing plaintiffs' administrative complaints on the basis of this cramped and erroneous view of the Commission's enforcement authority.

56. On April 1, 2016, the three Commissioners who voted to find "reason to believe" the contributions in these matters violated the prohibition on making a contribution "in the name of another" issued their Statement of Reasons ("Walther, Ravel, Weintraub SOR"). In contrast to

the claims of the three Commissioners blocking enforcement of the law, they determined that "current law clearly prohibits contributors from using the names of LLCs to shield their identity from disclosure to the public." *Id.* at 2 (footnote omitted). According to these Commissioners, "[t]his was not a difficult case . . . . Although the ability of individuals and corporations to make unlimited contributions to super PACs is a post-*Citizens United* and *SpeechNow* phenomenon, the longstanding prohibition against making contributions in the name of another remains unchanged and squarely applies to these cases." *Id.* at 3.

57. They further noted that, while 52 U.S.C. § 30122 prevents evasion of contribution limits, where relevant, "it also ensures the complete and accurate public disclosure of the sources of campaign contributions." *Id.* at 4. In support of this self-evident proposition, they cited, *inter alia*, *United States v. O'Donnell*, 608 F.3d 546, 550 (9th Cir. 2010) ("[T]he congressional purpose behind [Section 30122]—to ensure the complete and accurate disclosure of the contributors who finance federal elections—is plain.").

COUNT I – MUR 6485

58. Plaintiffs reallege and incorporate by reference paragraphs 1 to 57 as if fully set forth herein.

59. As discussed, the Commission's failure to find "reason to believe" that that Edward Conard and W Spann LLC violated 52 U.S.C. § 30122; W Spann LLC violated 52 U.S.C. §§ 30102, 30103 and 30104; and Restore Our Future and Charles R. Spies in his official capacity as Treasurer, violated 52 U.S.C. § 30122, and the subsequent dismissal of plaintiffs' administrative complaint, was based on the impermissible interpretation of FECA set forth in the Petersen, Hunter, and Goodman SOR, and was arbitrary, capricious, an abuse of discretion and

otherwise contrary to law. 52 U.S.C. § 30109(a)(8)(A); 5 U.S.C. § 706. *See also Orloski v. FEC*, 795 F.2d 156, 161 (1986).

60. As a result of the FEC's dismissal of plaintiffs' administrative complaint, plaintiffs, as well as the public, were deprived of timely information about the sources of the contributions made to Restore Our Future—information to which they were legally entitled under FECA.

COUNT II – MURs 6487 and 6488

61. Plaintiffs reallege and incorporate by reference paragraphs 1 to 60 as if fully set forth herein.

62. For the reasons alleged, the Commission's failure to find "reason to believe" that Eli Publishing L.C., Steven J. Lund, F8 LLC and Unknown Respondents violated 52 U.S.C. § 30122, and that Eli Publishing L.C. and F8 LLC violated 52 U.S.C. §§ 30102, 30103 and 30104, and that Restore Our Future and Charles R. Spies in his official capacity as Treasurer, violated 52 U.S.C. § 30122, and its subsequent dismissal of plaintiffs' administrative complaint, rested on an impermissible interpretation of FECA and was arbitrary, capricious, an abuse of discretion and otherwise contrary to law. 52 U.S.C. § 30109(a)(8)(A); 5 U.S.C. § 706. *See also Orloski*, 795 F.2d at 161.

63. As a result of the FEC's dismissal of plaintiffs' administrative complaint, plaintiffs, as well as the public, were deprived of timely information about the sources of the contributions made to Restore Our Future—information to which they were legally entitled under FECA.

COUNT III – MUR 6711

64. Plaintiffs reallege and incorporate by reference paragraphs 1 to 63 as if fully set forth herein.

65. For the reasons alleged, the FEC's failure to find "reason to believe" William S. Rose, Jr., Specialty Investment Group, Inc., Kingston Pike Development, LLC, Freedom Works for America, Richard J. Stephenson and Adam Brandon violated 52 U.S.C. § 30122, and that Specialty Investment Group, Inc. and Kingston Pike Development, LLC, violated 52 U.S.C. §§ 30102, 30103, and 30104, and its subsequent dismissal of plaintiffs' administrative complaint, rested on an impermissible interpretation of FECA and was arbitrary, capricious, an abuse of discretion and otherwise contrary to law. 52 U.S.C. § 30109(a)(8)(A); 5 U.S.C. § 706. *See also Orloski*, 795 F.2d at 161.

66. As a result of the FEC's dismissal of plaintiffs' administrative complaint, plaintiffs, as well as the public, were deprived of timely information about the sources of the contributions made to FreedomWorks—information to which they were legally entitled under FECA.

COUNT IV – MUR 6930

67. Plaintiffs reallege and incorporate by reference paragraphs 1 to 66 as if fully set forth herein.

68. For the reasons alleged, the FEC's failure to find "reason to believe" that Prakazrel "Pras" Michel, SPM Holdings LLC/SPM 2012 Holdings LLC, Black Men Vote, and William Kirk Jr. violated 52 U.S.C. § 30122; that Prakazrel "Pras" Michel and SPM Holdings LLC/SPM 2012 Holdings LLC violated 11 C.F.R. § 110.1(g); and that Black Men Vote violated 52 U.S.C. § 30104(b), and the subsequent dismissal of plaintiffs' administrative complaint, was based on an impermissible interpretation of FECA and was arbitrary, capricious, an abuse of discretion and otherwise contrary to law. 52 U.S.C. § 30109(a)(8)(A); 5 U.S.C. § 706. *See also Orloski*, 795 F.2d at 161.

69. As a result of the FEC's dismissal of plaintiffs' administrative complaint, plaintiffs, as well as the public, were deprived of timely information about the sources of the contributions made to Black Men Vote—information to which they were legally entitled under FECA.

REQUESTED RELIEF

WHEREFORE, plaintiffs, by their undersigned counsel, respectfully request that the Court grant the following relief:

a) Declare that the Commission's decisions to dismiss plaintiffs' administrative complaints were based on an impermissible interpretation of FECA, and were arbitrary, capricious, an abuse of discretion, and otherwise contrary to law;

b) Order the Commission to conform to such a declaration within 30 days, *see* 52 U.S.C. § 30109(a)(8)(C).

c) Award legal fees and costs of suit incurred by plaintiffs; and

d) Grant such other and further relief as this Court deems just and proper.

Dated: April 22, 2016

Respectfully submitted,

/s/ J. Gerald Hebert
J. Gerald Hebert (DC Bar No. 447676)
Lawrence M. Noble (DC Bar No. 244434)
Tara Malloy (DC Bar No. 988280)
Megan P. McAllen (DC Bar No. 1020509)
CAMPAIGN LEGAL CENTER
1411 K Street, N.W., Suite 1400
Washington, D.C. 20005
(202) 736-2200

Fred Wertheimer (DC Bar No. 154211)
DEMOCRACY 21
2000 Massachusetts Avenue N.W.
Washington, DC 20036
(202) 355-9600

Donald J. Simon (DC Bar No. 256388)
SONOSKY, CHAMBERS, SACHSE,
ENDRESON & PERRY, LLP
1425 K Street N.W., Suite 600
Washington, DC 20005
(202) 682-0240

Attorneys for Plaintiffs